

**"Public Participation in Environmental Impact Assessment.
A Comparative Analysis of the United Kingdom, South
Africa and the United States".**



Thesis presented in fulfilment of the requirement for the degree of Master of Public and Development Management (MPA) at the University of Stellenbosch, South Africa.

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Author's Declaration.

I, the undersigned, hereby declare that the work contained in this thesis is my own original work and that I have not previously in its entirety or in part submitted it at any university for a degree.

Signature

Date

Abstract.

Despite calls for greater public participation in all aspects of environmental planning, impact assessment and decision making, opportunities for participation in the planning, legal and administrative systems governing these activities, are limited. Public participation has often been reduced to a procedural exercise instead of a substantive process to include the public in environmental decision making. Thus, it is relevant to examine public participation in Environmental Impact Assessment (EIA), providing ways to improve its effectiveness.

The emphasis of this thesis is therefore, to compare the role of public participation in the environmental assessment process in the United Kingdom, South Africa and the United States. It begins by defining the principles of Environmental Impact Assessment and the concept of public participation and explores how the rationales of public participation may be integrated into the environmental planning process. Features of each of the three existing EIA systems are examined since components such as the appropriate legislative framework, the institutional framework, the public, and formal and informal public participation opportunities in the EIA process are the factors contributing towards effective public participation in Environmental Impact Assessment.

The author argues that public participation deserves attention because the degree of participation affects the quality of the Environmental Impact Assessment, which, in turn, affects the quality of a decision about a project. Broader participation creates more information and alternatives to be presented to decision makers, enhancing the opportunity to mesh public values and government policy. Although public participation may slow down the EIA process, the real goal of EIA theory is to ensure sustainable development, no matter how long the EIA process takes.

Apparently, the three EIA laws discussed in the comparative analysis, are consistent with sustainable development since these laws operate to force considerations of environmental impacts into the decision making process. Moreover, properly drafted

EIA laws are based on a strict standard of procedural compliance to ensure that the responsible decision makers are fully apprised of the environmental consequences which they review.

Involving the public is a safeguard against bad or politically motivated decisions, and a mechanism to increase public awareness of the delicate balance between economic and environmental trade offs. If conducted openly, it may ultimately increase public confidence in the decision making process. Public participation has the potential to enhance the maintenance of accountability in public and private sectors. The public should realise that they, individually or through interest groups, can participate in public matters that affect them, with a view to persuading decision makers and shaping environmental policies.

The thesis further reviews the different roles the public can play during the various stages of an Environmental Impact Assessment process, whereby formal and informal public participation opportunities are explored according to the country-specific context.

The comparative analytical framework in the thesis reveals significant variations within and between the three countries. Apparently, the three EIA systems seem to possess more or less mature, well-defined and formal Environmental Impact Assessment systems. For the UK and South Africa, examples could be taken from the United States, which has developed more adequate public participation provisions than those of the European Directive and of the South African EIA Regulations, particularly as far as the level and degree of public participation and techniques are concerned.

Opsomming.

Ten spyte van beroepe op groter openbare deelname in alle aspekte van omgewingsbeplanning, inpakbeoordeling en besluitneming, is geleenthede vir deelname in die beplannings-, administratiewe en wetlike sisteme wat hierdie aktiwiteite beheer, beperk. Openbare deelname word dikwels gereduseer tot 'n proseduriële oefening in plaas van 'n substantiewe proses te wees om die publiek in omgewingsbesluitneming te betrek. Dit is derhalwe relevant dat openbare deelname in Omgewingsimpakbeoordeling (algemeen in Engels na verwys as EIA) ondersoek word tot einde wyses vir effektiwiteitsverbetering daar te stel.

Die aksent van hierdie tesis is dus 'n vergelyking van openbare deelname in omgewingsbeoordeling in die Verenigde Koninkryk, Suid-Afrika en die Verenigde State van Amerika onderskeidelik. Daar word begin met definiëring van die beginsels van EIA en die konsep "openbare deelname" en 'n ondersoek na integrering van die rationales vir openbare deelname in die omgewingsbeplanningsproses. Kenmerke van elk van die drie bestaande EIA-stelsels word ondersoek aangesien komponente soos die geskikte wetgewende raamwerk, die institusionele raamwerk, die publiek, asook formele en informele openbare deelname-geleenthede in die EIA-proses, die bydraende faktore is tot effektiewe openbare deelname in EIA.

Die navorser argumenteer dat openbare deelname aandag verdien omdat die graad van deelname die kwaliteit van die EIA affekteer met voortspruitende effek vir die kwaliteit van besluitneming rakende 'n projek. Breër deelname skep meer inligting en alternatiewe vir voorlegging aan die besluitnemers ter verbetering van die geleentheid vir die ineenskakeling van openbare waardes en regeringsbeleid. Hoewel openbare deelname die EIA-proses mag vertraag, is die werklike doel van EIA-teorie die bewerkstelling van volhoubare ontwikkeling, ongeag van hoe lank die proses ook mag duur.

Die drie EIA-wette bespreek in die vergelykende analise is oënskynlik konsekwent in terme van volhoubare ontwikkeling aangesien hierdie wette gerig is op die inkorporering van omgewingsimpak oorwegings in die besluitnemingsproses. Verder is behoorlik geformuleerde EIA-wette gebaseer op 'n streng standaard van proseduriële onderworpenheid ten einde te verseker dat die verantwoordelike besluitnemers ten volle ingelig is oor die omgewingsgevolge onder hersiening.

Die insluiting van die publiek is 'n voorsorg teen swak of polities gemotiveerde besluite en 'n meganisme om openbare bewustheid ten opsigte van die delikate balans tussen ekonomiese en omgewings komprimieë. As dit openlik gedoen word, behoort dit op die lange duur die publiek se vertroue in die besluitnemingsproses te verhoog. Openbare deelname kan tot die behoud van, deur hul betrokkenheid aanspreeklikheid in die openbare en private sektore bydra. Die publiek moet besef dat hulle deur hulle betrokkenheid, individueel of deur middel van belangegroepes, in openbare aangeleenthede wat hulle raak, besluitnemers kan oorreed en omgewingsbeleid help vorm.

Die tesis beskou ook die verskillende rolle wat die publiek gedurende die verskillende fases van 'n Omgewingsimpakbeoordelingsproses kan speel, en verken geleenthede vir formele en informele openbare deelname binne elke land se spesifieke konteks.

Die vergelykende analitiese raamwerk in die tesis bring betekenisvolle variasies binne en tussen die drie lande aan die lig. Oënskynlik verteenwoordig die drie EIA stelsels min of meer volwasse, goed definieëde en formele Omgewingsimpakbeoordelingstelsels. Die VK en Suid Afrika kan leer uit die voorbeeld van die VSA wat meer voldoende voorsiening vir openbare deelname bied as die van die Europese Direktief en van Suid Afrika se EIA Regulasies, in besonder sover dit die vlak en graad van openbare deelname en tegnieke betref.

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I dedicate this work to my mother, Lieve Decadt-Driesens, who died on 19. December 2000.

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Chapter 1 : Introduction.

1.1. Background.

As a tool to aid decision making, Environmental Impact Assessment (EIA) is seen as a rational and systematic process which is often held to be holistic and proactive in its approach to environmental protection. As a process and technique, EIA essentially seeks to inform project authorisation bodies of the likely impacts of an action and the means by which those impacts can be reduced or mitigated. Evaluation of those impacts seeks to ensure sustainable development.

Consultation and participation are integral to this evaluation and are required in EIA-programmes around the world. The broadening of the EIA-procedure towards a more collaborative process in which scientific and technical data are centered on the interests of the different actors, has paralleled the increase in transparency in administrative processes in many countries and debates concerning the active role of the public in democracy and decision making.

Citizen involvement, however, is often reduced to a procedural exercise instead of a substantive process to include the public in environmental decision making. Thus, it is relevant to examine public participation in Environmental Impact Assessment, providing ways to improve its effectiveness. Public participation deserves attention because the degree of participation affects the quality of the environmental impact analysis process, which, in turn, affects the quality of the decision about a project. Broader participation creates more information and alternatives to be presented to decision makers, enhancing the opportunity to mesh public values and government policy.

An effective public participation programme in an Environmental Impact Assessment enhances the probability that a plan will be produced which is technically accurate, economically feasible, and socially and politically acceptable. In brief, this thesis seeks to relate the concept and practice of public participation to Environmental Impact Assessment.

This relationship is framed within the context of three countries where EIA is practiced : the United Kingdom, implementing the European Commission Directive 85/337, South Africa, where EIA Regulations were promulgated in 1997, and the United States, the first country where the EIA process was given formalised status through the National Environmental Policy Act in 1969. Basically, the rationales for public involvement and its institutionalisation through the EIA-process in these countries will be analysed, focusing on context-specific public participation programmes in environmental planning and decision making.

1.2. Schema.

The central question in the research is : *‘How can the effectiveness of provisions for and practices concerning public participation in the EIA-procedure be improved, with specific reference to those in the selected countries United Kingdom, South Africa and the United States ?’*.

To address this question, chapter 2 of the thesis will first establish the principles and procedures of Environmental Impact Assessment. The core principles of an EIA system are reviewed in order to understand the particular country-specific variations. Significant definitions of ‘Environmental Impact Assessment’ are placed in its context and the environmental setting and impacts are further analysed as integral parts of an environmental impact study. Of paramount importance as frame of reference for later chapters in this thesis is the cyclical EIA process and its various components – the screening, scoping, reporting, review and follow-up stages are represented as a series of iterative steps.

Chapter 3 highlights the notion of ‘public participation’, since the whole concept of Environmental Impact Assessment initially evolved from a general disenchantment with environmental decision making processes which excluded the general public. The underlying principles of public participation are based on elements of participatory and discursive democracy and serve as the building blocks of public participation in environmental decision making. Additional issues to be reviewed are the rationales for public participation, the nature and role of the public

and the most essential levels of public participation. Finally, a set of common public participation techniques are discussed.

In order to investigate the effectiveness of public participation programmes, public participation needs to be linked with Environmental Impact Assessment. What is the role of public participation in EIA procedures, and to which extent is public participation employed at the various stages of the EIA process ? Answers to these questions lead to the formulation of factors and indicators for measuring the effectiveness of public participation programmes in the Environmental Impact Assessment process. Therefore, an analytical framework as point of departure for the three consecutive country-specific chapters is proposed, useful to outline the salient features of each existing EIA system. Various components such as the appropriate legislative framework, the institutional framework, the public, and formal and informal public participation opportunities in the EIA process are the factors contributing towards effective public participation in Environmental Impact Assessment.

Based on this analytical framework, the British, South African and American contexts will be analysed in the next three chapters. The components as discussed above are going to serve as recurring pattern of the chapters. Indeed, Environmental Impact Assessment and the role of public participation is best understood by comparing how different jurisdictions have instituted these themes. It is known that some public participation programmes in EIA systems work better than others and step-by-step comparative analysis may help to throw more light on the factors which are essential to the success of these programmes.

Chapter 5 starts off with the review of public participation in EIA in the United Kingdom. The UK government implemented the European Commission Directive 85/337 on EIA in 1988, with revised regulations in 1999. The use of consultation and participation is officially encouraged throughout the environmental assessment process in the United Kingdom. However, it is only once the environmental impact statement has been submitted that the local planning authority must consult. Prior to this, public participation takes place in a minority of cases. The choice of the United Kingdom as part of the comparative analysis is relevant as a member state of the European Union, required to operate within a framework law, but still allowed a certain amount of discretion in the realisation of the EU-Directive.

Examining South Africa in chapter 6 as second case is challenging, since the country is located at the crossroads between developed and developing countries with a mix of first and third world environmental problems and an extremely diverse citizenry. EIA regulations were promulgated in 1997 in terms of the Environment Conservation Act, 1989, and are ensuring, inter alia : 'public information and participation, independent review and conflict resolution in all phases of the investigation and assessment of impacts'. The choice of South Africa as part of the comparative analysis, is relevant as contribution to enhancing normative and practical understanding of a pioneering area in a country, caught up in wider political and societal change. Greater participation by the public has emerged as an important subject of debate; lessons from more experienced countries like the United States, will challenge the development of much needed social capital in South Africa.

Choosing the United States as last country of this comparative analysis in chapter 7 is relevant, since the maturity of its Environmental Impact Assessment system can serve as benchmark for scrutinising the public participation level in the EIA process as driving force for more participatory environmental decision making. The EIA process was first of all countries given formalised status in the United States through the National Environmental Policy Act (NEPA) of 1969. Consultation and participation have been the driving force in the evolution of EIA in the United States. The NEPA requires that the relevant federal agencies be consulted during the preparation of the environmental impact statement (EIS) and that the public be involved.

The last chapter of this thesis draws the main threads of the earlier chapters together by summarising the performance of each of the three EIA systems in relation to their public participation opportunities against the evaluation criteria or indicators, and discussing their shortcomings. Analysis across Environmental Impact Assessment systems provides a means of better understanding public participation practice in any particular jurisdiction. Main issues arising after applying the analytical framework are discussed and should provide significant variations in each system. Finally, the comparative analysis would be incomplete without the creation of country profiles, followed by valuable insights into remedies and/or pointers to others.

1.3. Research approach and methodology.

The research thesis is conducted through the qualitative methodology of literature study. A primary literature survey was undertaken, enabling the author to demarcate the research topic clearly. Relevant publications (books, journals, documents, websites, legislation,...) have been consulted to determine whether the research topic is not a duplication of previous research.

Chapter 2 : Principles of Environmental Impact Assessment.

2.1. Introduction.

While the three Environmental Impact Assessment systems, which are going to be analysed in this thesis, all differ in detail, their basic principles are similar and demonstrate many common problems. It is therefore, a necessary point of departure to provide a general review of the core principles of an EIA system so that an understanding of the particular country-specific variations may be gained.

Firstly, this chapter contains some significant definitions of 'Environmental Impact Assessment' placed in its context and goes on to an analysis of the environmental setting and impacts as integral parts of an environmental impact study. Furthermore, the various elements of the Environmental Impact Assessment process are highlighted, since this generic model will serve as a focal point of analysis and frame of reference in later chapters of this thesis. Lastly, some critical issues are raised, explaining the effectiveness of certain EIA systems.

2.2. Background.

Environmental considerations were largely ignored for decades in the development of nations all over the world. Only in the last third of the twentieth century have environmental factors played a significant role in the speed and direction of global, regional and national progress. These factors have developed a new concern and recognition of the dependence that we, as human beings have on the long-term viability of the environment for sustaining life. (Jain, Urban, Stacey and Balbach,1993:1).

Barrow (1997:1) observes a shift from the ethos: 'develop now, minimise associated costs and, if forced to, clean up later' towards development which is more environmentally and socially appropriate. Damage to the environment and societies

in the name of progress is being questioned more often and there is increasing awareness that technology and biotechnology can pose huge threats.

The growing interest in sustainable development has its base in a fundamentally different value system for 'frontier' economics, leading to an 'organic', utopian approach to harmonising man with his environment. (UNEP,1993b:1)

Bartelmus (1994:7) links the search for the new paradigm of 'sustainable development' with the call for the integration of environmental and developmental objectives. Issues of population growth and concentration, desertification, pollution and resource exploitation continued to be the responsibility of specialised departments, while macro-economic policies focused on the maximisation of economic growth. Environmental impacts were addressed to some extent by environmental agencies without much influence, however, only on the process of socio-economic decision-making in central government.

The fragile connection between societal phenomena at large and the environment was not clearly demonstrated and generally accepted until the World Commission on Environment and Development published their report *Our Common Future* (1987), also known as the Brundtland Report. The magic wand of the Brundtland Commission was the term 'sustainable development', applied to the utilisation of both natural and man-made resources in such a way that 'it meets the needs of the present generation without compromising the ability of future generations to meet their own needs'. This intergenerational equity is a great challenge to ecology. Thus it is essential that ecologists join forces with other disciplines and with policymakers, social leaders, conservation groups and concerned citizens. (Brinck,1992:4-5).

Under the generic label of sustainable development, the World Commission on Environment and Development proposed a large variety of recommendations that would sustain the environmental base of development. One of the new approaches was a move from dealing with environmental effects after their occurrence, to focus on the 'policy sources' of these effects for preventive action. This can also be seen as a shift from a discussion of *environment* and development to *development* and environment. In other words, this is an attempt to merge environmental issues with

mainstream policy-making rather than to change those policies from the periphery of the environmental movement. (Bartelmus,1994:8)

The 1992 United Nations Conference on Environment and Development (UNCED), the Earth Summit in Rio de Janeiro, was another landmark attempt to translate the new paradigm of sustainable development into a globally adopted philosophy, an 'Earth Charter' and an international action programme, the 'Agenda 21'. (Bartelmus,1994:9)

In order to achieve sustainability, and to avoid ecological collapse, the following strategies must be implemented :

- adoption of more globally focused values (i.e. environmental and social values on global scale);
- reflection of these values in political decision making, supported by improved data and understanding;
- implementation of social and environmental best practices globally;
- promotion of innovations in technology and approaches to sustainable growth; and
- application of the 'Precautionary Principle' (i.e. planning for the worst case scenario in the face of inconclusive evidence of the impacts).

(State of The Environment Report South Africa,1999:5)

The United Nations Environment Programme (UNEP, 1993a:2-3) has defined the features of sustainable livelihood security as follows : ownership of and access to capital assets as defined by the people, equity and participation, meeting of basic needs, resource management and utilisation with a long-term view, and utilisation of traditional knowledge systems.

Many countries have undertaken work at the national level to put in place their respective National Conservation Strategies, facilitating them to inventory, manage and assess the potential for the development of natural resources. In addition, environmental legislation is being formulated, whereby statutory bodies enforce environmental laws and implementation of environmental policies. It is against the background of these various initiatives, and with the object of building on them that the need for mechanisms at national level for their translation into programmes

capable of being implemented at grassroots levels, has occurred in order to provide sustainable livelihoods. (UNEP,1993a:7)

Bartelmus (1994:149) advocates for the empowerment of grassroots organisations for the implementation of eco-development at local levels. Power-sharing is at the heart of the effective implementation of decentralised sustainable development in countries. A national compact has to be reached among national and local organisations with the possible support and mediation of non-governmental ones.

Finally, it is incumbent upon the human species to examine its actions and to attune to ensuring the long-term viability of earth as a habitable planet. The development of environmental impact analysis or assessment is the logical first step in this process. (Jain et al,1993:1)

2.3. Definition of Environmental Impact Assessment.

Environmental Impact Assessment evolved from fields including land use planning, cost-benefit analysis, multiple-objective analysis and modelling and simulation, and was primarily stimulated by a piece of US legislation, the National Environmental Policy Act 1969. That Act was prompted by various factors, including the media and information revolution in the late 1950s, concern on the part of the public and non-governmental organisations for the environment, the development of assessment techniques, developments in planning theory and the activities of the environmental movement. (Barrow,1997:167)

Environmental Impact Assessment requirements were subsequently adopted by numerous other countries and subjurisdictions over the next three decades, including most industrialised countries and many developing countries. Even international lending organisations like the World Bank require it of borrower countries. (Bartlett and Kurian,1999:416)

As the UK Department of Environment (Wood,1995:1) put it, formal Environmental Impact Assessment :

‘is essentially a technique for drawing together, in a systematic way, expert qualitative assessment of a project’s environmental effects, and presenting the results in a way which enables the importance of the predicted effects, and the scope for modifying or mitigating them, to be properly evaluated by the relevant decision-making body before a decision is given. Environmental assessment techniques can help both developers and public authorities with environmental responsibilities to identify likely effects at an early stage, and thus to improve the quality of both project planning and decision-making’.

Weston (1997:4) presents a more comprehensive definition of Environmental Impact Assessment, by quoting Walther (1992) :

‘Environmental Impact Assessment is a process having the ultimate objective of providing decision makers with an indication of the likely consequences of their actions’.

Here, it is acknowledged that decision makers are not simply those who provide the formal authorisation for the activity or development to take place. The decision maker in this sense can also mean the promoter of a project, who, armed with the Environmental Impact Assessment, can decide whether to pursue the project or not, alter and amend the project and mitigate against impacts at an early stage so as to avoid failure at an authorisation stage.

Weston (1997:5) argues that Environmental Impact Assessment should be seen in the context of the political aspiration to ‘safeguard the environment’, as described in the early (US) National Environmental Policy Act’s 1969 words “to create and maintain conditions under which man and nature can exist in productive harmony for present and future generations”. Its introduction in the 1960s took place in a period of social, economic and political change when the environment was becoming an internationally popular political cause.

The role of Environmental Impact Assessment in the prevention of environmental harm should be strongly emphasised. The European Community, for example, has established the fundamental principle with which all its environmental policy measures have to apply: the EC explicitly adopted the principle that ‘prevention is better than cure’. According to this principle, the implementation of a

European Directive on the assessment of environmental effects was a logical step. (Devuyst,1993:148)

Likewise, Glasson, Therivel and Chadwick (1994:3) state that Environmental Impact Assessment, in essence, is a systematic process that examines the environmental consequences of developmental actions, in advance. The emphasis, compared with many other mechanisms for environmental protection, is on prevention. Of course, planners have traditionally assessed the impacts of developments on the environment, but invariably not in the systematic, holistic and multi-disciplinary way required by Environmental Impact Assessment.

Weston (2000:185) argues that there is a need to place Environmental Impact Assessment (EIA) within a theoretical context in order to both fully inform practice of its goals and aims and to ensure that newly developing EIA-systems are located within a general decision-making framework which is responsive to what Environmental Impact Assessment seeks to achieve.

Finally, Caldwell (in Wood,1995:2) has summarised the significance of Environmental Impact Assessment as follows :

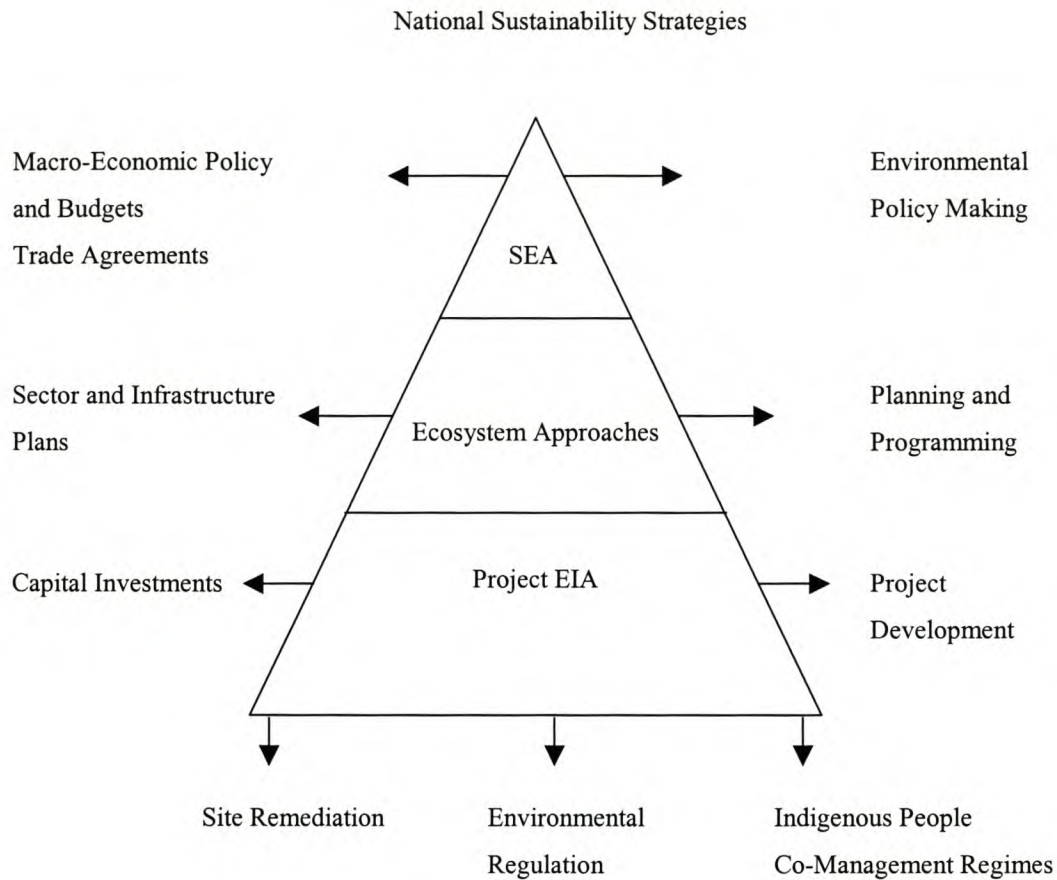
- beyond preparation of technical reports, Environmental Impact Assessment is a means to a larger end : the protection and improvement of the environmental quality of life;
- it is a procedure to discover and evaluate the effects of activities (chiefly human) on the environment – natural and social. It is not a single specific analytic method or technique, but uses many approaches as appropriate to a problem;
- it is not a science, but uses many sciences and engineering in an integrated inter-disciplinary manner, evaluating relationships as they occur in the real world;
- it should not be treated as an appendage, or add-on, to a project. but regarded as an integral part of project planning. Its costs should be calculated as a part of adequate planning and not regarded as something extra;

- Environmental Impact Assessment does not ‘make’ decisions, but its findings should be considered in policy- and decision-making and should be reflected in final choices, as part of decision-making processes; and
- the findings of Environmental Impact Assessment should focus on the important or critical issues, explaining why they are important and estimating probabilities in language that affords a basis for policy decisions.

2.4. Context of Environmental Impact Assessment.

To consider Environmental Impact Assessment as a mere technical procedure, with specific techniques, which can be applied mechanically to characterise environmental impacts, is too narrowly defined. Therefore, developing a wider perspective of Environmental Impact Assessment is needed, in order to create awareness of the broader social, institutional and political context of Environmental Impact Assessment.

The ecosystem approach, as shown in Figure 1, is being developed as a co-operative inter-agency framework for resource management, linking Environmental Impact Assessment and Strategic Environmental Assessment (SEA). (Sadler,1996:29)



Strategic Environmental Assessment expands Environmental Impact Assessment from projects to policies, plans and programmes. Development actions may be for a project (e.g. a nuclear power station), for a programme (e.g. a number of pressurised water reactor nuclear power stations), for a plan (e.g. town and country planning system), or for a policy (e.g. the development of renewable energy). Environmental Impact Assessment to date has been generally used for individual projects, but EIA for programmes, plans and policies, otherwise known as Strategic Environmental Assessment, is currently generating much interest in countries all over the world. (Glasson et al, 1994:7). The focus of this thesis, however, is on Environmental Impact Assessment only.

According to Morgan (1998:17-18), the core Environmental Impact Assessment-activity sits within a wider context of the local and regional community, with its management structures (local authority procedures, policies and plans), the public, NGOs, interest groups, and the statutory agencies of central government. The EIA-exercise will almost certainly involve some, perhaps all, of these actors in some

way : to help develop a list of issues, to provide technical information, or to come up with social and cultural responses to the proposals.,

Furthermore, national policies and programmes frequently influence the course of an Environmental Impact Assessment. Legislation, and the institutional structures based on it, provide the basic procedural framework for the process, while government policies and political actions can affect the decision-making processes. The population outside the local and regional setting for a proposal may well have certain interests that they may wish to express, usually based on broad principles (e.g. conservation of indigenous species) rather than on specific issues. (Morgan,1998:17-18)

International factors can equally influence Environmental Impact Assessments within a country. Funding bodies like the World Bank and USAID require Environmental Impact Assessments as part of the funding approval process. The United Kingdom, for instance, has enacted formal EIA-legislation in 1988 in form of several laws that implement the European Community Directive 85/337/EEC, which would never have occurred without pressure from the European Commission. (Glasson et al,1994:34)

Finally, the EIA method has linkages into other systems – economic, political and cultural. The private sector proponent is clearly also part of the wider economic system and responds to its dynamics, which may feed back to affect the proponent's behaviour in the EIA-system. The political system is a major influence on the attitudes and behaviour of politicians at all levels of government, while the cultural system will influence how many of these processes, such as public involvement, actually operate in a given country. (Morgan,1998:20) Appendix I gives some hypothetical examples of contrasting perspectives on EIA.

Bartlett and Kurian (1999:416) for instance, observe that much of the literature on Environmental Impact Assessment is written by biologists, planners, engineers and lawyers who express a (naive) desire for EIA to be non-political, although most literature nevertheless assumes that Environmental Impact Assessment will influence the world by changing political outcomes, if not by direct political means.

2.5. The Environmental Setting.

The description of the environmental setting (also referred to as 'baseline', 'existing', 'background' or 'affected environment') is an integral part of an environmental impact study. There are two major purposes of describing the environmental setting of the proposed project area in an impact study, namely (1) to assess existing environmental quality, as well as the environmental impacts of the alternatives being studied, and (2) to identify environmental significant factors or geographical areas that could preclude the development of a given alternative(s). Additional purposes include to provide sufficient information to decision makers and reviewers, unfamiliar with the general location of the project need and the environmental characteristics of the study area. (Canter,1996:102)

While the checklist of environmental characteristics endeavours to include the major characteristics and linkages which should be considered by the environmental analyst or planner, it is not exhaustive and the user should be aware that other characteristics, significant to a particular situation, may occur. Assistance of experts may be required to assess certain potential impacts and to identify unlisted characteristics which may be affected in specific cases. (Department of Environmental Affairs and Tourism (South Africa),1992a:5)

Depending upon the environmental setting at a location where the project or action is to be implemented, the relative importance or even the existence of an impact would vary. Consequently, when using a generalised Environmental Impact Assessment-system, provisions need to be made for incorporating the site-specific environmental setting. In a systematic procedure, environmental baseline information serves as a quasi-filtering mechanism, eliminating consideration of impacts unrelated to the specific site. (Jaine et al,1993:149).

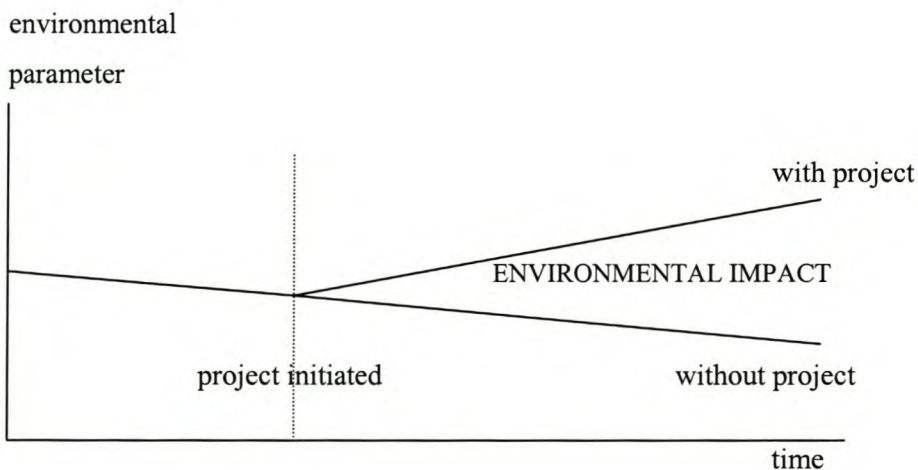
2.6. Impacts.

An impact may be defined as a change in the state of the environment. It arises from the interaction of a specific set of subprocesses of development with specific elements of the environment. (Meredith,1991:232)

Environmental Impact Assessment implies a study of the probable changes or impacts in the various socio-economic and biophysical characteristics of the environment. It is necessary to determine the possible impacts on the environmental characteristics and to quantify these changes whenever possible. An interdisciplinary analysis, as conducted through the Environmental Impact Assessment-process, is encouraged. (Jain et al,1993:5)

According to Glasson (1994 :18-19), the environmental impacts of a project are those resulting changes in environmental parameters or factors, in space and in time, compared with what would have happened had the project not been undertaken.

Figure 2 (Glasson et al,1994:18) provides a simple illustration of the concept :



The potential impacts of a proposed project can be classified according to various parameters :

- short-term versus long-term impacts :

Short-term impacts resulting from the proposed project, may be those associated with the construction phase, including such disturbances as noise, dust, erosion and

wildlife displacement. Long-term, post-construction impacts may include such factors as pollution from stormwater runoff, air or surface water pollution, consumption of energy, depletion and contamination of groundwater sources or heavy demands on community services such as the disposal of solid waste. (Bregman and Mackenthun,1992:31-32).

- direct versus indirect impacts :

Projects may also have immediate and direct impacts that give rise to secondary and indirect impacts. A reservoir based on a river system not only takes land for the immediate body of water, but may also have major downstream implications for flora and fauna and for human activities such as fishing and sailing. (Glasson et al,1994:18). Another example is the indirect impact of changes in population patterns and growth upon the resource base, including land use, water and public services. (Jain et al,1993:111)

- cumulative impacts :

A single activity may produce a negligible effect on the environment. However, a series of similar activities may produce cumulative effects on certain aspects of the environment. The most obvious solution to deal with these potential cumulative effects, is to prepare impact assessments on broad programmes rather than on a series of component actions, with review of activities at the programme level. (Jain et al,1993 :112)

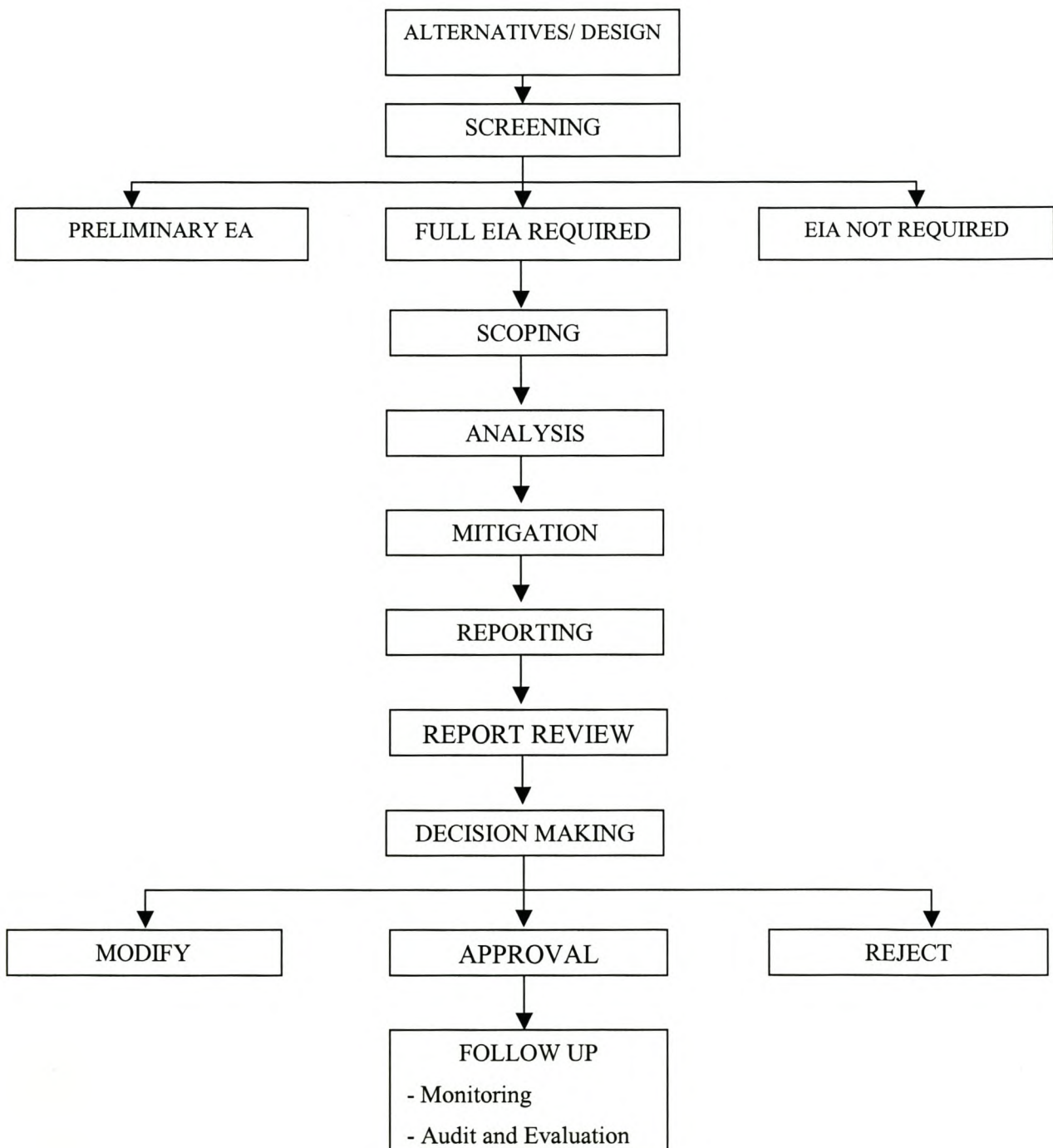
It is important to note, in the light of the research hypothesis, that most environmental impacts can be observed globally, but environmental problems differ nationally in scope and intensity. Consequently, they receive different priorities in national planning and decision making. (Bartelmus,1994:12)

Appendix II summarises environmental concerns of developing and industrialised countries, pointing out particularly significant issues. (Bartelmus,1994:13-16).

2.7. The Environmental Impact Assessment Process.

Internationally, the Environmental Assessment process either closely follows or broadly approximates the well known, main patterns of steps and activities which

lead from initiation and screening to decision making and implementation. Figure 4 (Sadler,1996:18) generalises this process, recognising that actual components and phases vary with the jurisdictional framework and that others may conceptualise the process differently. (Sadler,1996:16) The way in which country-specific varieties occur, will be analysed in depth in a later part of the thesis, in connection with the public participation component.



The International Study of the Effectiveness of Environmental Assessment, under the auspices of the International Association of Impact Assessment, draws on case experience from many partner countries and EIA-organisations, and states : ‘It must be emphasized that the Environmental Assessment process is meant to be applied *purposively* (fitted to function), *flexibly* (not all steps may be needed), and *relatively* (so there is a focusing on key issues)’. Within federal states, and also within a transboundary context, the harmonisation of Environmental Assessment-systems is of importance, with a view to avoiding duplication and ensuring the decisions, taken in one jurisdiction, take account of their potential effects on adjacent countries. The overall approach is one of adaptiveness to the problems under review, to their context and circumstances and to the requirements of decision-making. (Sadler,1996:17)

2.7.1. Alternatives/Design.

The project/action identification includes an examination of alternatives, such as processes and locations as well as the scale and dimension of the project or action. (Weston,1997:6)

Wood (1995:102) describes the consideration of alternatives as a contentious area in Environmental Impact Assessment. It is, for example, not a mandatory requirement of the European EIA-Directive that alternatives to the proposed project be considered in the Environmental Impact Assessment report.

The United Nations Environment Programme (1993a:9) however, emphasises that Environmental Impact Assessments should include proposing policy alternatives. In developing countries for instance, a focus on identification of alternatives like appropriate technologies, the central role of women in development, local education and training or indigenous knowledge should be considered.

2.7.2. Screening : is an Environmental Impact Assessment needed ?

A screening mechanism seeks to focus on those projects with potentially significant adverse environmental impacts or where the impacts are not fully known. Those with little or no impacts are screened out and are allowed to proceed to the normal planning permission/administrative processes without any additional assessment and without additional loss of time and expense. (Glasson et al,1994:75)

In many cases, the screening process in a given country is strongly influenced by the institutional arrangements for Environmental Impact Assessment in that country. For instance, in member countries of the European Union, there is a list of project types for which an Environmental Impact Assessment is mandatory. (Morgan,1998:93-94)

One of the problems at this initial stage of the EIA-process, is, as described by the United Nations Environment Programme (1993b:8), that Environmental Impact Assessment guidelines generally offer no guidance as to what should be done if the screening exercise leads to conclusions which, in the light of data collected later, turn out to be flawed.

Another critical issue, according to Morgan (1998:99), is the use of Initial Environmental Evaluation (IEE) as an assessment device. This preliminary, broad impact identification is based on existing information, together with consultations with interested agencies, NGOs and the local communities. An IEE is a balance between carrying out a rapid assessment, using available information as much as possible, and ensuring that all proposals that should be subject to greater environmental scrutiny by Environmental Impact Assessment, are actually identified as such.

2.7.3. Scoping – Which impacts and issues to consider ?

The scoping guidelines, issued by the South African Department of Environment Affairs (1992:5), give the aims of scoping as being :

‘to provide opportunity for the proponent, his/her consultant(s), the relevant authorities and interested parties to exchange information and express their views and concerns regarding a proposal before an Impact Assessment is undertaken;

to focus the study on reasonable alternatives and relevant issues to ensure that the resulting Impact Assessment is useful to the decision maker and addresses the concerns of interested and affected parties; and

to facilitate an efficient assessment process that saves time and resources and reduces costly delays which could arise were consultation not to take place’.

Scoping is generally carried out in discussions between the developer, the competent authority, other relevant agencies and ideally the public. Good practice would be to bring them together in a working group and/or meetings with the developer. Impact identification techniques should be used to structure the discussion and suggest key issues to consider, such as particularly valued environmental attributes and social, economic and environmental issues related to the specific locality. (Glasson et al,1994:76)

Beanlands (1988:33), amongst others (Morgan 1998, Wathern 1988, Glasson 1994, Sadler 1996, Wood 1995) underlines the importance of scoping strongly, since the success of an Environmental Impact Assessment will depend largely upon how it is conducted. The importance attached to it, arises from the fact that environmental assessments are almost always conducted under serious limitations of time and resources. Any priority-setting activity, therefore, should improve efficiency and provide a more focused product for decision makers.

Given that scoping is based on expectations, not certainties, it is inevitable that in some cases, assumptions about the nature and extent of project impacts will need to be revised later in the Environmental Impact Assessment process. (UNEP,1993b:8)

In most jurisdictions, scoping is considered to be complete when the terms of reference or equivalent document is prepared. No scoping process, however well performed, is likely to cover all eventualities. As studies proceed, new issues and impacts may emerge, or ideas about the depth of analysis may change. Experience shows that flexibility in negotiated agreements for process timelines and study schedules is necessary, in order to allow for variations to be made to the scope as the

study proceeds, and as increased understanding of the environment and likely impacts develops. (Sadler,1996:117)

Appendix III reviews in detail (a) problems in Environmental Impact Assessments, caused by poor scoping or by lack of scoping; and (b) the benefits of the early use of scoping in Environmental Impact Assessments. (Department of Environmental Affairs and Tourism (South Africa),1992d:30-31)

2.7.4. Impact Analysis.

The purpose of Impact Analysis is to identify, predict and evaluate the potential significance of risks, effects and consequences. (Sadler,1996:19)

By establishing the most likely environmental effects of a proposed activity, the basis for (a) seeking public views on issues of concern, and (b) organising and focusing the impact prediction activities of the main Environmental Impact Assessment, may be established. (Morgan,1998:114)

Beanlands (1988:35) argues that any consideration of the significance of environmental effects must acknowledge that Environmental Impact Assessment is inherently an anthropocentric concept; it is centred on the effects of human activities and ultimately involves a value judgement by society concerning the significance of these effects. Such judgements, often based on social and economic criteria, reflect the political reality of impact assessment in which significance is translated into public acceptability and desirability.

A wide range of impact identification methods are available : from simple checklists and matrices (for compliance with regulations), to complex approaches like Geographic Information Systems, networks and overlay maps. In choosing a method, the analyst needs to consider more specific aims, some of which contradict one another:

- to ensure compliance with regulations ;
- to provide a comprehensive coverage of a full range of impacts, including social, economic and physical impacts;

- to distinguish between positive and negative, large and small, long-term and short-term, reversible and irreversible impacts;
- to identify secondary, direct, indirect and cumulative impacts;
- to distinguish between significant and insignificant impacts;
- to allow comparison of alternative development proposals;
- to consider impacts within the constraints of an area's carrying capacity;
- to incorporate qualitative as well as quantitative information;
- to be unbiased and to give consistent results; and
- to be of use in summarising and presenting impacts in the EIS.

(Glasson et al,1994:92-93)

2.7.5. Mitigation.

According to Canter (1996:183;239), impact-mitigation measures may need to be added to the project proposal to make it acceptable. Project-activity design or operational features can be used to minimise the magnitude of environmental impacts. The revised project or activity can then be reassessed to determine if the mitigation measures have eliminated or sufficiently minimised the impacts.

At one extreme, the prediction and evaluation of impacts may reveal an array of impacts with such significant adverse effects that the only effective mitigation measure may be to abandon a proposal altogether. A less draconian and more normal situation would be to modify aspects of the development action to avoid various impacts. An example of this method is the establishment of buffer zones and the minimal use of toxic substances to avoid impacts on local ecosystems. (Glasson et al,1994:134-135)

There is a danger, however, that the application of Environmental Impact Assessment and the adoption of mitigation measures arising from the analysis of likely impacts, creates an illusion that the project thus modified, represents some sort of 'optimum' project design in terms of overall impact and use of resources. In

reality, a local optimum is achieved, i.e. the negative impacts of the project as designed, are simply minimised by a design modification. (Glasson et al,1994:135)

2.7.6. Reporting and Review.

Reporting involves the preparation of an Environmental Impact Statement (EIS) or an equivalent document for decision making. The EIS or report also serves as the main channel for communicating the results of the study phase to a wider audience, including the affected public. (Sadler,1996:96)

The required contents of an Environmental Impact Statement include at least :

- a description of the development comprising information on the site, design and size of the development;
- a description of the measures envisaged in order to avoid, reduce and remedy significant adverse effects (mitigation measures);
- the data required to identify and assess the main effects which the development is likely to have on the environment;
- an outline of the main alternatives, studied by the applicant or appellant and an indication of the main reasons for his choice, taking into account the environmental effects;
- a non-technical summary of the information.

(Scottish Executive, 1999, <http://www.scotland.gov.uk/library/pan/pan58-06.htm>)

Read (1997:82) recommends that planning authorities should submit the Environmental Statement and application to a screening process to ensure that :

- the documentation meets legal requirements so it can be formally registered;
- the Environmental Statement is basically adequate;
- the proposal is checked against the development plan (this can identify issues for later consideration and establish whether the project is a 'departure'); and

- a comprehensive list of consultees is identified.

Unless the basic groundwork is done, there is a chance the review will encounter later problems quite probably involving retracing the process, to the annoyance of the applicant or the frustration of the case officer and probably both.

By the same token, Jain et al (1993:65) caution that it is not prudent to avoid preparing an Environmental Impact Statement by intentionally understating the possible impact of the action. An important project could be halted or seriously delayed by approving authorities at higher levels who may question the validity of a determination in which there is no potential for significant environmental impact.

The Environmental Statement is submitted in support of the planning application, but is not part of the application itself. The statement should be objective, and information indicating negative effects should not be omitted. Conclusions should be drawn from the data, rather than tailored to favour the proposal, and a distinction should be made between matters of fact, judgement and opinion. (Scottish Executive, 1999, <http://www.scotland.gov.uk/library/pan/pan58-06.htm>)

2.7.7. Decision Making.

As a process and a technique, Environmental Impact Assessment is not a decision-making process in itself, but a tool to aid decision-making. (Weston, 2000:185)

The preparation of an Impact Statement, as described in the previous part, presents accurate and appropriate information in a clear, understandable and relevant form for decision-making, whereby confidence limits are placed on the predictions and clarifying areas of agreement and disagreement among the parties involved in the process. (Sadler,1996:23)

Wood and Jones (1997:1238-1239) describe two types of decision-making models, as analysed by Simon (1948) and Cohen and Cyert (1965) :

- The rationalist model assumes that the decision is based upon reliable (scientific) knowledge and the use of well-defined criteria developed

from a clear set of objectives. This allows the decision-maker to identify a set of explicit goals and alternative courses of action and therefore to select the 'best' course of action to achieve the stated goals, using the relevant data and criteria.

- The behavioural model recognises that in reality human knowledge is often incomplete, that the values that underlie objectives are not always shared, and that the capacity for rational analysis of alternatives in complex situations is limited. Goals are therefore not well defined (and are potentially conflicting) so that decision-makers attempt to balance conflicting interests as best as they can.

These models have been related to decision-making in the Environmental Impact Analysis : the EIA-process contains elements of the two types of model and can be viewed as a hybrid situation. Decision-making within the EIA-process often involves many individuals and can be very complex. The decision will usually be influenced by political pressure as well as by the environmental advantages/disadvantages of the proposal in question.

A tool for decision making is Cost-Benefit Analysis (CBA). Meredith (1991:239) regards CBA as a way of evaluating results by comparing net benefits with net costs to produce an overall evaluation of the ultimate impact of an action or event. One application of CBA to decision making is the inclusion of 'externalities'. Externalities are costs which can be imposed – directly or indirectly – on third parties or on the community at large. Environmental Impact Assessment can help to reveal externalities, but the situation is complicated by two factors :

- many costs may not be quantifiable or commensurable; and
- evaluations must consider total community welfare, not merely the self-interest of single actors.

According to Wood (1988:110), the decision making itself should not raise any technical problems, provided that evaluation criteria have been carefully defined and the appropriate parameters of each plan alternative have been satisfactorily measured as well as their significance assessed. In practice however, difficulties do arise because of deficiencies in these items.

It is important to note that decisions are actually made at every stage of the process, from screening out those projects where Environmental Impact Assessment is not necessary, through the identification of significant impacts, to the choice of alternatives and mitigation measures and on to the project authorisation stage and beyond. (Weston,2000:185) (see figure 5)

Figure 5 : Decision Making in the Environmental Impact Assessment-process :
(Weston,2000:186)

EIA-stage	Decision
Screening	<i>Is the project one for which an EIA is necessary ?</i>
Scoping	<i>What environmental impacts need to be examined ?</i>
Prediction	<i>What is the size magnitude or extent of the impacts ?</i>
Assessment	<i>Is the impact significant ?</i>
Mitigation	<i>What can be done to reduce the impact ?</i>
Review	<i>Is the assessment and the Environmental Statement adequate ?</i>
Decision	<i>Should the project be authorised to proceed ?</i>
Monitoring/auditing	<i>Was the prediction of impacts accurate and do the mitigation measures work ?</i>

2.7.8. Monitoring and Auditing.

Monitoring and Environmental Impact Assessment follow-up mechanisms often remain poorly developed, especially by comparison to pre-decision activities. In large measure, this emphasis is an understandable reflection of the basic character of Environmental Impact Assessment as a predictive exercise that occurs in advance of project decision making. (Sadler,1996:126)

Indeed, there is very little stress on follow-up, on comparing what was predicted, with what really happened, and on feeding the results of such exercises back into the EIA-process. Culhane's (1993) maxim "Build it and forget it" appears appropriate. Dipper, Jones and Wood (1998:733), argue, that without feedback

Environmental Impact Assessment remains a static, linear exercise rather than becoming a dynamic and iterative process.

Like other stages of Environmental Impact Assessment, follow-up activities need to be targeted and tailored to issues. Where necessary, a comprehensive approach to follow-up will encompass four main components :

- *surveillance* and inspection to ensure terms and conditions are being followed in project construction;
- *monitoring* to check for compliance with standards to test the effectiveness of mitigation and other protective measures, and to detect potentially damaging changes (e.g. above as-predicted levels);
- *management* to respond to unforeseen events or to offset larger-than-predicted effects (e.g. by employing contingency plans or revising environmental management plans);
- *auditing/evaluation* to review aspects of EIA-practice and performance and to provide feedback for process improvement (e.g. mitigation measures, administrative measures). (Sadler,1996:127)

2.8. Critical Issues for Effective Environmental Impact Assessments.

To conclude the chapter on principles of Environmental Impact Assessment, the major principles for design and development of effective Environmental Impact Assessment processes, are highlighted, based upon basic reference documents, discussed from an international perspective at various EA-workshops by the previously mentioned International Study of the Effectiveness of Environmental Assessment :

- **Clear mandate and provisions** : vested in law, have specific, enforceable requirements, and prescribe the responsibilities and obligations of proponents and other parties.

- **Explicit goals and objectives** : a clear purpose and dedication to achieving environmental protection and/or sustainable development.
- **Uniform, consistent application** : automatically applied to all proposals and actions with potential environmental effects and consequences.
- **Appropriate level of assessment** : scaled to the degree of environmental significance and extent of public concerns associated with a proposal.
- **Relevant scope of consideration** : examine all pertinent environmental options to and aspects of a proposal, including cumulative effects, interrelated socio-economic, cultural and health factors, and sustainability implications.
- **Flexible, problem-solving approach** : adapted to deal with a range of proposals, issues, and decision-making situations.
- **Open, facilitative procedures** : transparent and readily accessible, with a traceable record of assessment decisions and timely opportunities for public involvement and input at key stages.
- **Necessary support and guidance** : requisite level of resources and procedural guidance for conducting assessments in accordance with requirements, principles and standards of good practice.
- **'Best practice' standards** : undertaken with professionalism, objectivity and credibility, as identified by 'best practices' in impact science, public consultation and process administration.
- **Efficient, predictable implementation** : applied in a timely manner that fosters certainty, minimises delay and avoids unnecessary burdens on proponents.
- **Decision-oriented** : provides sound, tested practical information that is readily usable in planning and decision making.
- **Related to condition-setting** : explicitly linked to approvals and, as necessary, to specified terms and conditions.

- **Follow-up and feedback in-built mechanisms** : explicit measures for checking on compliance with conditions, monitoring effects, managing impacts, and auditing and evaluative performance.
- **Cost-effective outcomes** : promote actions that ensure environmental protection at least cost to society. (Sadler,1996:22)

2.9. Conclusion.

This chapter discussed the principles of Environmental Impact Assessment, containing some significant definitions of the concept in its context, whereby the environmental setting and impacts were considered as integral parts of an environmental impact study. Furthermore, the various elements of the Environmental Impact Assessment process were highlighted, since this generic model will serve as a focal point of analysis and frame of reference in later chapters of this thesis. Lastly, some critical issues were raised, explaining the effectiveness of certain EIA systems.

As a tool to aid decision making, the EIA system is seen as a rational and systematic process which is often held to be holistic and proactive in its approach to environmental protection. As a process and technique, EIA essentially seeks to inform project authorisation bodies of the likely impacts of an action and the means by which those impacts can be reduced or mitigated, in trying to ensure sustainable development.

Certainly, consultation and participation are integral to this evaluation and are required in EIA-programmes around the world. Therefore, the next chapter will review the notion of 'public participation' as the second pillar on which the comparative analysis will be based.

Chapter 3 : Public Participation.

3.1. Introduction.

Having examined the Environmental Impact Assessment principles and procedures, it is useful to consider the issue of public participation more closely. The whole concept of Environmental Impact Assessment arose, in part, from a general disenchantment with environmental decision making processes which excluded the public. It was very often the public who suffered most from bad planning, when people had to live with the consequences of decisions over which they had little or no influence. Therefore, Environmental Impact Assessment is seen by many of its advocates as a means of making public participation central to environmental decision making.

This chapter presents an examination of the concept of 'public participation'. The first section shows the background and underlying principles of public participation like participatory democracy, followed by some definitions. Additional issues include the rationales for public participation, whereby the reasons for calls for greater participation are covered. After concisely reviewing the nature and roles of 'the public', the most essential levels of public participation are highlighted. The chapter then advances a set of public participation techniques applied in public participation programmes. Finally, some critical issues in public participation for practitioners are discussed.

3.2. Background of Public Participation.

Public participation is based on the democratic ideal of citizen representation in decision making. Jasanoff (1996:63) highlights in this respect the principle of 'democratic participation'. The end of the Cold War signalled to many the end of the repressive state and a vindication of the idea that no society that systematically closes its doors to the voices and ideas of its citizens can survive. The idea of pluralism took

hold around the globe with the notion that each culture or voice has an equal right to be heard.

Pluralist ideas can be traced back to early liberal political philosophy, and notably to the ideas of John Locke (1689, early liberalism) and Montesquieu (1748, separation of powers). Their first systematic development, however, is found in the contributions of James Madison (1751). The 'Madisonian democracy' recognises both the existence of diversity or multiplicity in society, and the fact that such multiplicity is desirable, offering a variety of access points to competing groups and interests. The most influential modern exponent of pluralist theory is Robert Dahl. He recognises that modern democratic systems differ markedly from the classical democracies of Ancient Greece and, with Charles Lindblom, coined the term 'polyarchy' (rule by the many), referring to modern representative democracies. The United Kingdom, South Africa and the United States all exhibit strongly polyarchical features with a relatively high tolerance of opposition to check the arbitrary inclinations of government, and most importantly, the opportunities for public participation in politics, as a guarantee to a reliable level of popular responsiveness. (Heywood,1997:31;76;294;302).

A common theoretical approach within public participation or democracy theory, is the popular decision making model of 'discursive' or 'deliberative' democracy, based on the concepts of Jurgen Habermas (1979,1984,1987,1991,1992), dealing with the ideal speech situation and communicative competence. Habermas calls for free and totally uncoerced discussions among all interested and affected parties in collaborative decision making venues. He demands a level playing field for a 'discourse' that reaches closure only via the free and uncoerced consensus of all involved. (Webler and Tuler,2000:567-568)

Participatory democracy seems at first glance to be wholly congenial with the spirit of science, which places its emphasis on free inquiry, open access to information, and informed critical debate. Public and demonstrable knowledge is displacing the authority of secret, closely held expertise. Similarly, States that publicly display the benefits of collective action to their citizens, grow in legitimacy against alternative States that cannot be held publicly accountable for their activities. (Jasanoff,1996:64)

According to Palerm (2000:581), the elements of discursive democracy have been proposed as the building blocks of public participation in environmental decision making by several authors (e.g. Fiorino, 1989; Laird, 1993, Webler, 1995).

Girma and Mason (1983), cited in Morgan (1998:148), differentiate four public participation perspectives: the *political-philosophical* position evaluates public involvement in terms of the theoretical requirements of good government and the role of citizens in that process, while the *improved planning* position considers the position considers the practical contribution of the public to the decision making processes. The *political market* position views public involvement as a commodity provided by politicians if their electorate demands it, with the implication of tokenism rather than commitment to the principles of involvement. The final position, *political conflict-resolution*, primarily views involvement as a means for reducing or avoiding conflict and developing wider support for the eventual decisions.

Finally, Conway (1991:174) argues that democracy requires participation, and participation cannot be fostered by political institutions alone : all political systems in society should be democratised and socialisation through participation should take place in all areas. Therefore, the result of participation is not only that a certain type of policy outcome occurs, but also that the fulfilment of the human potential of all citizens is maximised. In other words, public participation is necessary to achieve the satisfaction of the highest need in Maslow's hierarchy of needs – the need for self-actualisation.

3.3. Definition of Public Participation.

In order to discuss participation models and methods, one needs to agree on what public participation is. The definition of 'participation' is often the subject of debate – the use of terminology such as 'involvement' is more and more common – but for the purposes of this thesis, these important discussions will be side-stepped by using the general term 'participation' which conforms to the most frequently published research.

Hamann (1999:9) calls public participation 'forums for exchange that are organised for the purpose of facilitating communication between government, citizens, stakeholders and interest groups, and businesses regarding a specific decision or problem'. This definition has the advantage that it explicitly includes interaction between the participants themselves.

Canter (1996:587) on the other hand, stresses that public participation should involve both information feedforward (from public officials to citizens) and feedback (from citizens to public officials) :

'Public participation is a continuous, two-way communication process which involves promoting full public understanding of the processes and mechanisms through which environmental problems and needs are investigated and solved by the responsible agency; keeping the public fully informed about the status and progress of studies and implications of project, plan, programme, or policy formulation and evaluation activities; and actively soliciting from all concerned citizens their opinions, perceptions of objectives, needs, their preferences regarding resource use and alternative development or management strategies and any other information and assistance relative to the decision'.

Connor (1990:I-3), a consulting sociologist for public participation programmes in Canada, makes several assumptions in relation to the public participation concept :

- public participation is neither a single unitary act, such as a public hearing, nor a haphazard set of occurrences, but a planned process;
- the process of public participation is largely a learning experience by which each participant acquires a more complete understanding of both the issues and how other parties see the issues. Each participant is potentially both a learner and a teacher; a growing and mutual trust and confidence between the parties is an essential foundation for learning and creative co-operation;
- public participation encourages the acceptance of civic responsibility in ways meaningful for the people concerned;

- since technology and human values change, this concept recognises that the plan must preserve its flexibility for future needs, problems and opportunities; and
- the democratic manner of operation recognises an open process to gather information, ideas and preferences as directly as possible from citizens and to respond to this input, yet it also assumes a representative process of legislative democracy in which the political system functions by making final decisions on matters of public policy.

Connor's comments are applicable to public participation activities within the natural resource management field. Daniels and Walker (1996:74) argue that environmental agencies have seldom designed activities to promote social learning and civic discovery among diverse groups. Quite often, traditional public involvement tries to 'inform and educate', presuming that the expert decision maker simply needs to 'impart knowledge' to a passive, receptive public. At worst, it is not particularly concerned about the degree to which the public understands the decisions and policies made. Yet to be effective, public deliberation needs more than public information; it requires forums that encourage social learning.

Finally, Roberts (1995:224) argues that what was once described as a grassroots movement, has rapidly become the basis for the way that government and industry conduct their day-to-day business when faced with proposals or situations that might be seen as contentious. The message from the public on every front is clear : 'we will not be left out of the decision making process' !

3.4. Rationales for Public Participation.

Much of the discussion surrounding public participation overlooks the question of the rationales underlying calls for greater participation and therefore what benefits are likely to result.

Campbell and Marshall (2000:326-329) have developed a framework of rationales in terms of the underlying motivation for participation, that is, whether the

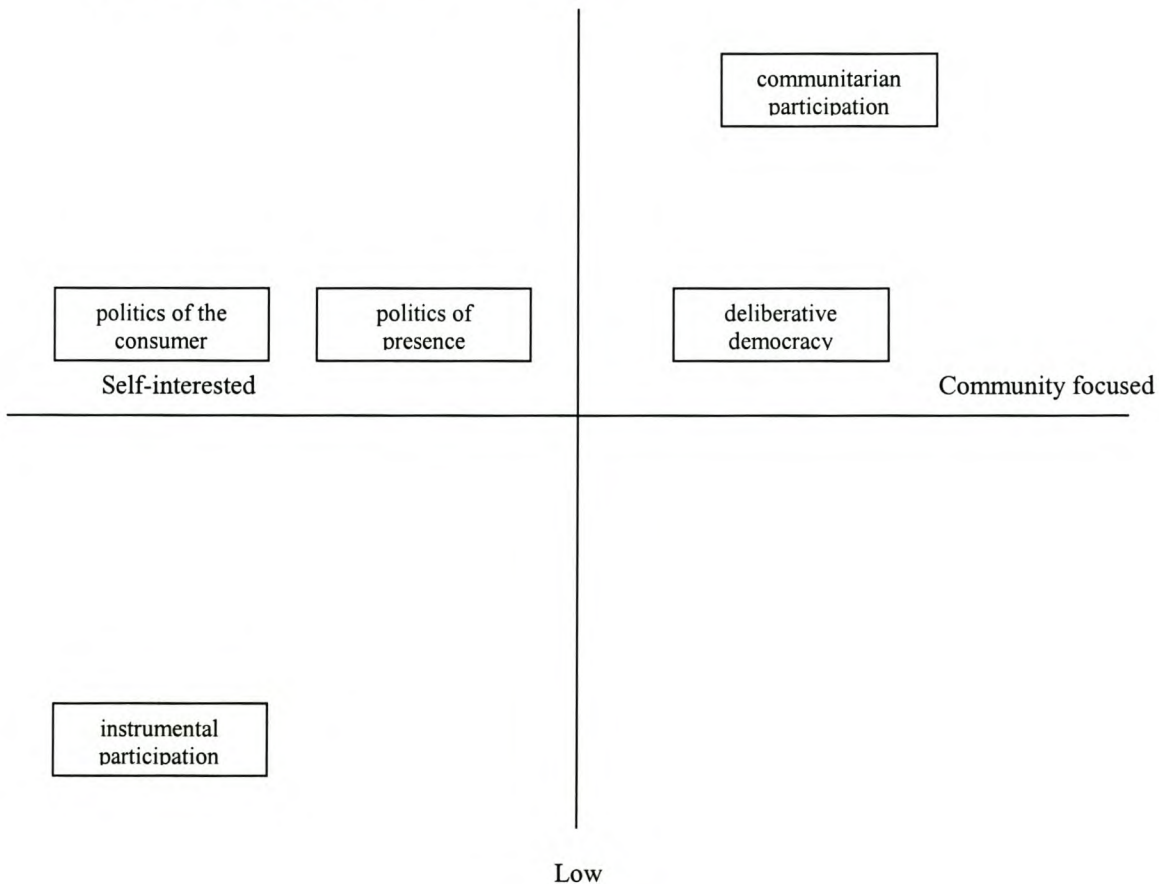
interests being promoted essentially concern the individual or are focused on the well-being of the community as a whole, a continuum from the one to the many.

Figure 5 shows five differing rationales for participation :

x : motivation for participation

y : number of participants

High



- *Instrumental participation* : the instrumental perspective on participation places focus on the basic right of the individual to be able to express and pursue their own self-interests. The role of the government is to safeguard the freedom of the individual but not to intervene on behalf of any particular interests. The protection of individual rights therefore provides the opportunity for (some) self-interested individuals to place a check on the activities of the state.

- *Communitarian participation* : the communitarian perspective places stress not on individual self-interest but on the community and the duties and rights associated with securing its collective well-being. The role of the government is therefore to

positively facilitate participation by the maximum number of individuals. Equality between citizens, rather than the freedom of each individual, is the key goal.

- *Politics of the consumer* : the perspective of the politics of the consumer builds on public choice theory to emphasise the rights of consumers/customers to express their preferences and to have freedom of choice; the market is the pre-eminent mechanism for the expression of choice. The role of the government is to facilitate the expression of these preferences and respond to them while maximising consumer choice.

- *Politics of presence* : the exclusion and marginalisation of many groups by the existing political processes is the starting point for the politics of presence. If the interests of these groups are to be taken into account, they need to be represented by people who share their identity and experiences. The right of excluded groups to have presence within the decision making apparatus of the state is therefore regarded as fundamental.

- *Deliberative democracy* : the deliberative democracy perspective is critical of the emphasis which tends to be placed on participation as a means of promoting self-interest. Instead stress is placed on the creation of institutional contexts and practices which promote open dialogue and knowledge sharing. The active involvement of a wide range of participants or stakeholders is fundamental to this perspective.

The dilemma self-interest/public interest has further been explored by environmental psychologists like Gifford (1987:381). He considers the issue of how individuals will behave in a limited commons (natural resources), to be an imperative question: each member of the limited commons has the choice of acting in self-interest or in the public interest. Self-serving behaviour is easier and more rewarding, whereas the public-spirited act is often more expensive, difficult, time-consuming and less immediately rewarding than the self-serving act.

Kastenholz and Erdmann (1992:183) argue that citizen involvement enhances environmentally sound behaviour in society. This positive social behaviour serves the conservation and/or improvement of a satisfactory quality for the collective biophysical and socio-cultural environment both at present and in the future. Thus, actions geared towards the conservation of vital natural resources are, in their active components, environment-related, but are in the end guided by values and principles which contribute to the common good.

Beside this rather behavioural approach, Perkins-Spyke (1999:270) remarks that public participation goals sometimes conflict with one another, resulting from the contrasting expectations of participants and decision makers. Citizens, for example, may choose to participate because they believe they are experts in their own right. Agencies, on the other hand, may approach public participation seeking nothing more than a quick-and-easy public stamp of approval to a decision they feel is within their own expertise.

Finally, Barrow (1997:75) argues that people participate for different reasons. These include a sense of duty; a desire to advance wider causes; hope for material gain; and religious or political motivation. Therefore, it is important that the assessor decides what cross-section of the public will be manipulated, informed or consulted : all or elected representatives, selected representatives or special-interest groups.

3.5. Nature and Roles of the Public.

“An Athenian citizen does not neglect the state because he takes care of his own household; and even those of us who are engaged in business have a very fair idea of politics. We alone regard a man who takes no interest in public affairs, not as harmless, but as a useless character; and if few of us are originators, we are all sound judges of policy”. By Pericles, Athens (431 BCE).

Who is the public ? All generalisations about ‘the public’ must, according to Heywood (1997:222), be treated with grave suspicion; there is no indivisible public interest as such, consisting of selfless individuals acting in accordance with a general or collective will which reflects the common interests of all citizens.

Indeed, Canter (1996:597) observes that the general public cannot be considered as one body. The general public is diffuse, but at the same time highly segmented into interest groups, geographic communities, and individuals. There are sets of groups of publics that have common goals, ideas and values. When people come together in organisations in order to influence public policy, the organisation becomes an ‘interest group’.

According to Rubin (1997:26), interest groups are increasingly the mechanism of choice for individuals and organisations to make their voices heard on public policy issues. Individuals and organisations, who may not know how to influence decision makers or to participate effectively on their own, can hire an interest group to do the work for them. By using pooled resources, interest groups afford their members an opportunity to have a greater impact than they could have by acting separately.

It is essential for any organisation approaching the public, to be aware whether the public is :

- *experienced in public involvement* : different strategies may be necessary according to whether a particular community or group of stakeholders have had previous experience with public processes;
- *informed or uninformed about the issues* : if the public is already informed, it will be easier to bring people 'up to speed';
- *hostile or apathetic* : if previous processes have been contentious or unsuccessful, then the public must be allowed to 'vent' as the first step toward building or rebuilding trust;
- *united or divided* : it is more difficult for the organisation to decide what approaches to take if the public is divided.

Organisations must simultaneously be aware of the public's :

- *local, regional, national or international interests* : the geopolitical interests the public represents, influences how a process should proceed (Roberts,1995:227). The slogan of the 60's "Think Globally, Act Locally" is still true today (Carlson,1999:207);
- *ethnic, cultural and geographical diversity* : indigenous and immigrant ethnic groups must be involved in different ways than 'dominant culture' publics, or when involving both rural and urban populations. (Roberts,1995:228-229)

Which potential communities can be identified and targeted for public participation purposes? One approach is to identify those persons who believe themselves to be affected by the study outcome, although this is a result of their

subjective perception. Some of the bases on which people are most likely to feel affected are :

- proximity : people who live in the immediate area of a project;
- economic : job opportunities or competitive advantages;
- use : users of the area (e.g. hikers, fishermen) are likely to be affected;
- social : positive or negative effect on the community; and
- values : some issues directly affect values, e.g. jobs versus environmental enhancement. (Canter,1996:598)

Connors (1990:I-26) claims that little systematic attention has been given to the 'silent majority' of the public. Yet, in many cases, more than 80 per cent of the population fall into this category; decisions are made by a relative handful of protagonists and antagonists who catch the ears of the politicians. The reasons why the majority are silent, are numerous: people are unaware of the issues because of selective perception; the issues seem irrelevant to them; the issues are in good hands and need no direct involvement; the issues have already been decided upon by officials ('the majority are not silent – the officials are deaf'); the issues are of a low priority; or responding is difficult.

Chapman (1997,<http://www.sussex.ac.uk/Units/gec/pubs/briefing/brief-15.htm>) links the apathy of the silent majority to the lack of concern about the environment, due to far-off, separate and abstract concepts of the environment. In the UK for instance, the vast majority of people are not primary producers and thus take nothing directly from the environment other than the oxygen they breathe or the petrol they use for their vehicles; water, food and clothing comes indirectly. Nor do they directly deposit anything back into the environment, apart from carbon dioxide, a little sulphur, nitrogen oxides and a small amount of litter and noise.

This divide is felt even stronger in developing countries, where development usually has priority over environmental concerns, both on the political arena and in public circles.

How can the public constructively participate in environmental decision making, within the broad scope of assessment goals and objectives ?

In this regard, Wallis (1998:335) argues that the practices by which individual community-building initiatives are conducted and evaluated, helps formation of social capital, embodying reflective action, mutual learning and genuine collaboration. This participatory approach contrasts concisely with the traditional, expert-based or funder-driven evaluation :

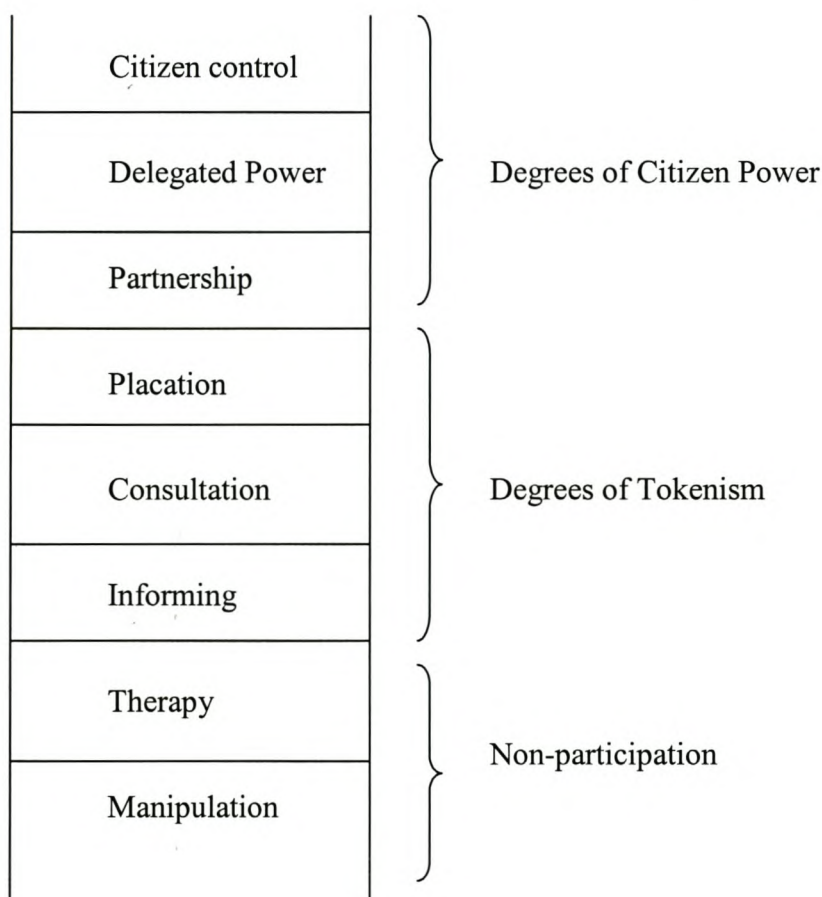
PARTICIPATORY EVALUATION	FUNDER-DRIVEN EVALUATION
Shared responsibility (with the community).	Professional responsibility (for the community).
Power residing with participants.	Power vested in agencies.
Participants seen as experts.	Professionals seen as experts.
Planning and services implemented on the basis of programme needs assessments.	Planning responsive to each agency's mission.
Leadership develops shared vision, broad support and participatory problem solving.	External leadership based on authority, position and title.
Appreciation of ethnic diversity.	Indifference to ethnic diversity.
Emphasis on co-operation, collaboration, and shared resources.	External linkages limited to networking and co-ordination.
Inclusive decision making.	Closed decision-making process.
Accountability to participants.	Accountability to the agency.
Evaluation to document programme development and improvement.	Evaluation primarily to determine funding.
Maximum community involvement at all levels.	Community participation limited to providing feedback.

(Wallis,1998:330)

3.6. Levels of Public Participation.

While the concept of public participation is applauded by everyone, it is often seen that a distinction is made between the purposes of public participation, reflected by the degree to which citizens are involved in decision making.

The seminal work of Arnstein views the extent and intent of citizen involvement as rungs of a ladder in three levels: non-participation (therapy, manipulation); degrees of tokenism (informing, consultation, placation); and degrees of citizen power (partnership, delegated power, citizen control). These levels form a continuum from the lower rungs of an empty ritual to the higher rungs of real power needed to affect the decision. (Sheperd and Bowler,1997:736)



(Arnstein,1969:217)

The bottom rungs of *manipulation* and *therapy* describe levels of non-participation that have been contrived by some to substitute for genuine participation. Their real objective is not to enable people to participate in planning or conducting programmes, but to enable powerholders to ‘educate’ or ‘cure’ the participants.

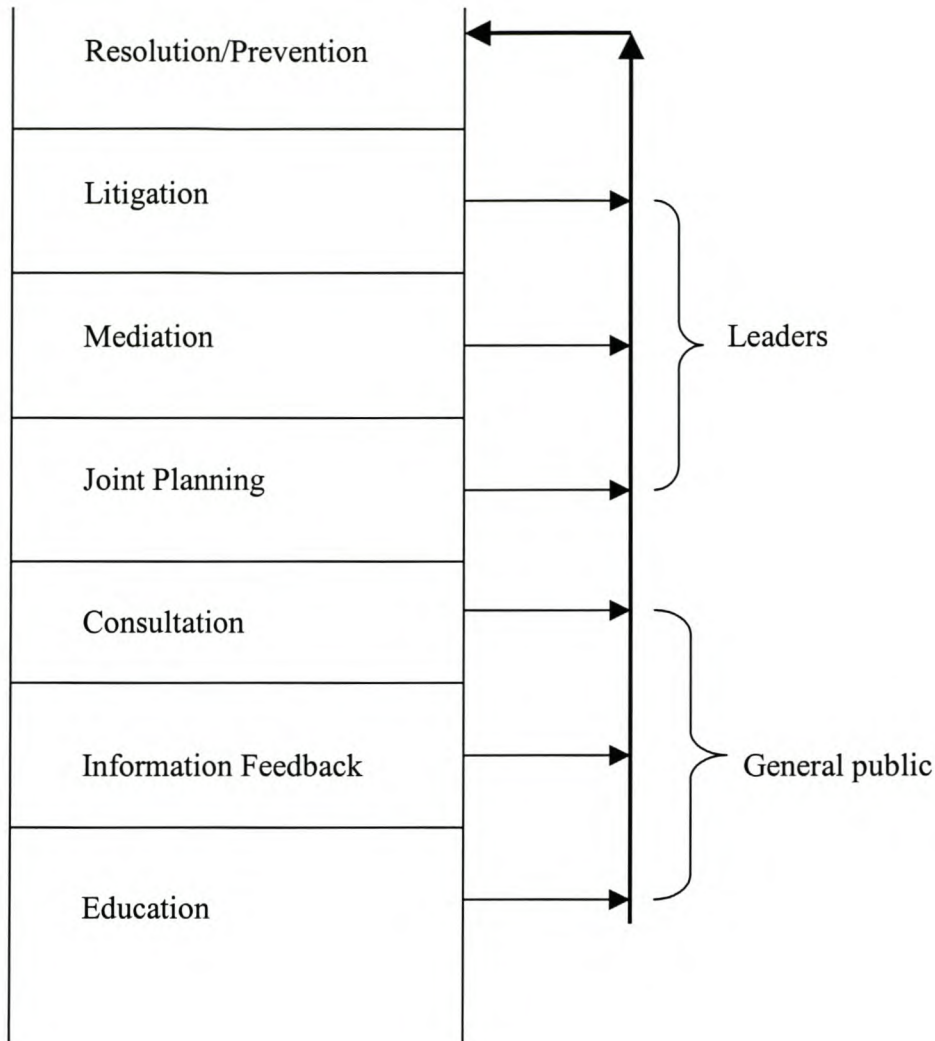
The *informing* and *consultation* rungs of tokenism allow the have-nots to hear and to have a voice, but under these conditions, they lack the power to insure that their views will be heeded by the powerful. When participation is restricted to these levels, there is no follow through or assurance of changing the status quo. *Placation* is simply a higher level of tokenism because the ground rules allow have-nots to advise, but retain for the power holders the continued right to decide.

Further up the ladder are levels of citizen power with increasing degrees of decision making. Citizens can enter into a *partnership* that enables them to negotiate and engage in trade-offs with traditional powerholders. At the topmost rungs, *delegated power* and *citizen control*, have-not citizens obtain the majority of decision making seats, or full managerial power. (Arnstein,1969:217)

The ‘have-nots’ are poor citizens, especially minorities, excluded from the political and economic processes, and are often regarded as the real concern of public participation.

Wang and van Loo (1998:445) acknowledge that Arnstein’s typology distinguishes true public participation from public participation games. Participation without any power to influence pertinent decisions is meaningless, and the extent to which participants feel empowered, is an important measure related to the success of public participation.

Connors (1990:I-25) applied the famous ladder of Arnstein to a newly developed ladder which is addressing a wider range of situations, reflecting a cumulative relationship between one rung and the next. His diagram might even be more relevant to the context of public participation in environmental decision making.



According to Connors (1990:I-25), *education* is the essential foundation of an informed constituency, enhanced by a comprehensive public participation programme. The *information feedback* is the simplest form of public involvement in which information is provided to the public, together with several alternative solutions which respondents are asked to rank. This level of public participation can be suitable for simple and less controversial proposals. The *consultation* on the other hand, is a more comprehensive process which solicits new alternatives and further evaluation criteria from the interested and informed public for a proposal. This (still advisory) process is more demanding of both the planners and the public, but also more powerful in generating generally accepted solutions to issues. *Joint planning* involves decision making jurisdictions as partners in the planning process, whereas *mediation* is an application of the labour-management conflict resolution process in which a neutral and respected third party seeks to develop a workable compromise.

Power is balanced between parties, negotiation is seen as inevitable and the decision can be reviewed later. *Litigation*, while often slow, costly and divisive, is the last opportunity to resolve an issue and can be more appropriate than traditional practitioners. Finally, a sense of equity about proposed solutions is important through *resolution*.

3.7. Public Participation Techniques.

A critical element in planning a public participation programme is associated with the selection of public participation techniques to meet identified objectives and the needs of identified publics.

According to Roberts (1995:233), it is essential to carefully choose the participation methods that will be used, since there is no single best technique for a given public process. In fact, it is advisable to use several techniques in combination ('triangulation') in order to meet the needs of divergent groups at different stages of the process, and to accomplish the organisation's various objectives.

Canter (1996:603) has classified public participation techniques by function :

- Information dissemination : public information programmes; drop-in centres; hot lines; meetings – open information.
- Information collection : surveys; focused group discussions; delphi-based techniques; community-sponsored meetings; ombudsman activities.
- Initiative planning : advocacy planning; charettes; community planning centres; computer-based techniques; design-in and colour mapping; plural planning; task forces; workshops.
- Reactive planning : citizens' advisory committees; citizen representatives on policy-making boards; 'fishbowl' planning; interactive cable TV-based participation; meetings – neighbourhood; neighbourhood planning councils; policy capturing; value analysis.

- Decision making : arbitratative and mediative planning; citizen referendum; citizen review board; media-based issue balloting.
- Participation process support : citizen employment; citizen honoraria; citizen training; community technical assistance; co-ordinator or co-ordinator-catalyst; game simulation; group dynamics.

The selection of an overall approach and techniques is generally a matter of judgement, based on experience. The organisation can benefit in the design stages through the use of continuous quality improvement techniques such as 'benchmarking', where successful processes are reviewed and analysed, and one is adopted as the standard for the organisation's project. (Roberts,1995:233)

According to Goldenberg and Frideres (1986:273), there is a wide variety of public participation programmes and an apparent disagreement concerning their effects, due to the difficulty of comparing incommensurables that go by the same label. Measuring these effects and differences of public participation programmes in different jurisdictions will be analysed in a later chapter of the thesis.

3.8. Critical issues in Public Participation.

This last section describes a number of the major issues facing public participation practitioners. It highlights some of the most immediate challenges in designing and implementing successful public participation processes.

- *Consulting the internal publics :*

In the rush to 'go public', permanent and contracted staff and consultants working for the organisation undertaking the process are often left out of a process designed to be inclusive. The public, often regarding the staff as the first line of contact, will be suspicious to the organisation's commitment to the process. Therefore, a major component of any public participation process should include consulting, educating and sharing information with staff and consultants.

- *Unrealistic expectations* :

The complexities of the process are often a surprise to public participation practitioners who underestimate complicated political issues and time and resource intensiveness. The better the organisation's strategy plan, the more likely that the problems will be anticipated and worked out in advance.

- *Championing* :

Public participation needs champions within organisations to promote the value of participation; they have the authority, responsibility, drive, belief and commitment to promote and defend an activity to both public and senior management.

- *Public overload* :

The growing trend toward requiring public participation in decision making, is overloading the public and its ability to respond. Consequently, the public is increasingly 'shutting down' and withdrawing. This is especially true in environmental decision making, where a flood of public processes has led to organisations competing for the public's attention.

- *Paying the public to participate* :

Intervener funding, or paying the public to participate, generates considerable discussion. Should the public's costs of presenting and researching a case be offset? The lack of consistency among jurisdictions is causing problems between various government agencies and stakeholder groups.

- *Public scepticism* :

The public is becoming jaundiced with some processes because people do not see the consulting organisation using results of their input. (Roberts,1995:236-238).

Goldenberg and Frideres (1986:274) add that this scepticism is only a small step away from the view that public participation programmes are merely public relations programmes by proponents, who use them to convince the public of the benefits of a given development. The public ought to support it, or at least remain neutral.

- *Staff and decision maker overload :*

Involving the public has in some cases resulted in increasing workload or staff burnout. A tendency to skim the surface of issues and miss valuable opportunities, arises.

- *Technical and scientific 'fact' versus public perception :*

The public may form its opinions based on information that may be biased, incorrect or intentionally misleading. Technical experts who tend to discount inherited, traditional or local knowledge, only complicate this issue and work to isolate the participants. (Roberts,1995:238)

The scientific journal 'Nature' (2000:259) recommends that a greater effort should be spent in giving the lay public a voice so that vested interests can be countered and a foundation of greater public confidence and mutual trust can be established.

- *Data overload :*

Very few organisers can cope with the qualitative, open-ended information in large volumes of written, verbal, electronic and other forms of input from the public. Time must be spent up-front designing methods, staffing and allocating resources to handle this information.

- *Indigenous and ethnic group consultation :*

With changing ethnicity in many jurisdictions, there is a need to emphasise involvement of minority groups and development of approaches and techniques appropriate to different cultures, communities and individuals. (Roberts,1995:239)

The World Bank (1993:4) has taken the major role in developing principles, guidelines and requirements for involvement of marginal groups (poor, women, indigenous, ethnic minorities), whereby people come together with project authorities to share, negotiate and control the decision making process in project design and management.

- *Stakeholder accountability :*

It is unclear whether stakeholder representatives actually communicate the results of negotiations with their own memberships. Therefore, a method is required to

determine that the information is getting back to the public and interest groups. (Roberts,1995:240)

An appropriate consultation framework to address these critical issues is a *conditio sine qua non* for effective public participation programmes. The World Bank (Rukuba-Ngaiza,1996:<http://www.worldbank.org/participation/eareview3.pdf>) recommends a framework with development of good consultation plans by teams of environmental scientists, local social scientists, resettlement and participation specialists and legal experts. As a result, the consultation framework provides strategies with information on the relevant country's legal requirements, selected appropriate communication strategies, identified relevant stakeholders and elicited information that is reflected in the environmental impact assessments.

3.9. Conclusion.

The purpose of the chapter was to provide better understanding of issues related to public participation. After concisely reviewing the background and underlying principles of public participation, definitions of public participation and rationales for public participation, the researcher focused specifically on the nature and roles of the public. Furthermore, the different levels of public participation have been covered. Finally, some public participation techniques were briefly discussed, followed by a few relevant issues, which are critical to public participation practitioners.

It was useful at the outset to examine public participation in general terms, in order to focus on public participation components within the Environmental Impact Assessment process. Hence, the next chapter will review public participation with reference to the Environmental Impact Assessment process and will treat participation as an integral, functional part of Environmental Impact Assessment rather than just a procedural add-on.

Chapter 4 : Public Participation in the Environmental Impact Assessment Process.

4.1. Introduction.

Having examined the Environmental Impact Assessment principles and procedures on the one hand and public participation on the other hand during the previous chapters, it is now important to link public participation with EIA in order to be able to investigate the effectiveness of public participation programmes.

The first section explains the need and role of public participation in EIA procedures, after which the core part of this chapter outlines public participation at the various stages of the Environmental Impact Assessment process. Furthermore, the main aspects of the enabling environment as parameters for effective public participation in EIA are highlighted. Finally, an analytical framework for further evaluative purposes is developed.

4.2. Need for Public Participation in the Environmental Impact Assessment Process.

Wherever practiced, Environmental Impact Assessment has typically involved the public as part of the decision making process of project development. Although the specific nature and degree of public participation varies with the legal jurisdiction of various assessment rules and regulations, public participation may generally be viewed as predicated on specific executive, legislative or judicial definitions of various rights of the public, including the *right of access to information*, gathered during the assessment process, the *right to contribute information* to the assessment process, and the *right to challenge decisions* made in the process or in light of the assessment effort. (Erickson,1994:164)

Many critics like Goldenberg and Frideres (1986:273) suggest however, that, regardless of procedural compliance with the objective of public participation, the fact remains that assessment teams typically view the public more as an adversary than a

partner in the Environmental Impact Assessment process. So-called public participation programmes exist only where they satisfy either legal requirements or perceived ethical ones, merely satisfying the requirement, exclusive of the content or effect of such programmes.

Erickson (1994:164) argues that assessment teams must concentrate on the benefits that can be derived through the enhancement and expansion of communication between team members and the public, instead of concentrating on the risks and difficulties of including the public in the Environmental Impact Assessment process.

Sunclair and Diduck (1995:221) describe the need for public participation in the EIA-process, contributing to the success of the administrative decision making process in the following manner :

- public participation helps prevent 'capture' of the administrative tribunal by the industry being regulated, and tends to produce more balanced decisions;
- as the administrative tribunal is meant to be fair, it is necessary for the public to become involved so that concerns other than those of the industry will be heard, and therefore traditionally unrepresented interests will be expressed;
- increased public participation will promote public confidence in the process;
- increased public participation and scrutiny encourages efficiency and the production of policies and decisions that are responsive to the needs of the public;
- the threat of appeal or review posed by public interest interveners can produce greater accountability; and
- the capacity of the public to intervene allows for challenge of illegal or invalid actions or decisions before they come into force.

Webler, Kastenholz and Renn (1995:444) identify an additional reason why public participation should continue to play a role in Environmental Impact Assessment - but this is rarely a motivation for project sponsors who are responsible for implementing public participation programmes. When citizens become involved in working out a mutually accepted solution to a project or problem that affects their

community and their personal lives, they mature into responsible democratic citizens and reaffirm democracy.

This social learning phenomenon is of particular importance for young democracies like South Africa, where people were traditionally discouraged or even disabled from the planning process.

Finally, Clark (1994:296) states that all the evidence suggests that public participation in planning, decision making and Environmental Impact Assessment has a critical role to play in helping to integrate economic, social and environmental objectives. It is a safeguard against bad or politically motivated decisions, and a mechanism to increase public awareness of the delicate balance between economic and environmental trade offs. If conducted openly, it may ultimately increase public confidence in the decision making process.

4.3. Role of Public Participation in Environmental Impact Assessment Procedures.

The place and role of participation in Environmental Impact Assessment procedures has evolved over time, as Sadler (1986), in Garipey (1991:355) has shown in his summary of the main phases in the evolution of Impact Assessment and review processes.

Figure 6 : Evolving Role of Public Participation in Project Assessment and Review Trends.

1. Pre – 1970	No real opportunity for public review.
2. 1970 – 1975	Formal opportunities for public scrutiny and review established through EIA-procedures.
3. 1975 – 1980	Public Participation becomes integral part of project planning.
4. 1980 – 1985	Scoping and focusing procedures and less protected forms of consultation based on negotiation and mediation.

This points to a more direct role for public participants, reflecting to Arnstein's ladder of citizen participation, as discussed in the previous chapter.

Erickson (1994:165-166) reviews the different roles the public can play during the various stages of an Environmental Impact Assessment process in particular :

- provide data and information that is essential for the assessment of impacts on the physical and the social environment;
- help identify local and regional issues that should be addressed in the assessment process;
- help identify local citizens and groups with special expertise that might be used by the assessment team for specific tasks;
- provide historical perspective to current environmental conditions and trends in the local and regional area of proposed project development;
- provide criteria for evaluating the significance of identified impacts;
- suggest and help organise forums and mechanisms for public participation in the assessment process;
- identify and evaluate the scope of work and schedule, project alternatives and potential mitigation measures; and
- provide liaison between assessment team members and key organisations and other public groups and individuals.

It is unreasonable to presume that any one public group or organisation can or would desire to undertake all these tasks. Different groups and individuals may undertake one, several, or none of these tasks, depending on individual interests, availability of time, knowledge and experience.

Finally, Gariepy (1991:354) identifies three functions that public participation fulfils in an Environmental Impact Assessment process :

- a *validation* function :

participation requirements are aimed at opening up the decision making process to the public. A project initiator entering public hearings must make a coherent case, one that appears to be the end product of a rational and fair process. Public hearings serve to 'reassure a spectator public that the scheme

being investigated can withstand attack from all quarters'. The successful long-term implementation of an EIA requires that the process and the related institutions maintain a degree of credibility and accountability;

- an *internalisation* function :

participation provisions can pave the way for a variety of inputs from the public, whose values and preferences can provide a means for comparing alternatives. Citizens affected by a project can press for mitigation measures and thus set the conditions under which a project will receive the go-ahead. In this sense, Environmental Impact Assessment procedures operate as a solution to internalise externalities; and

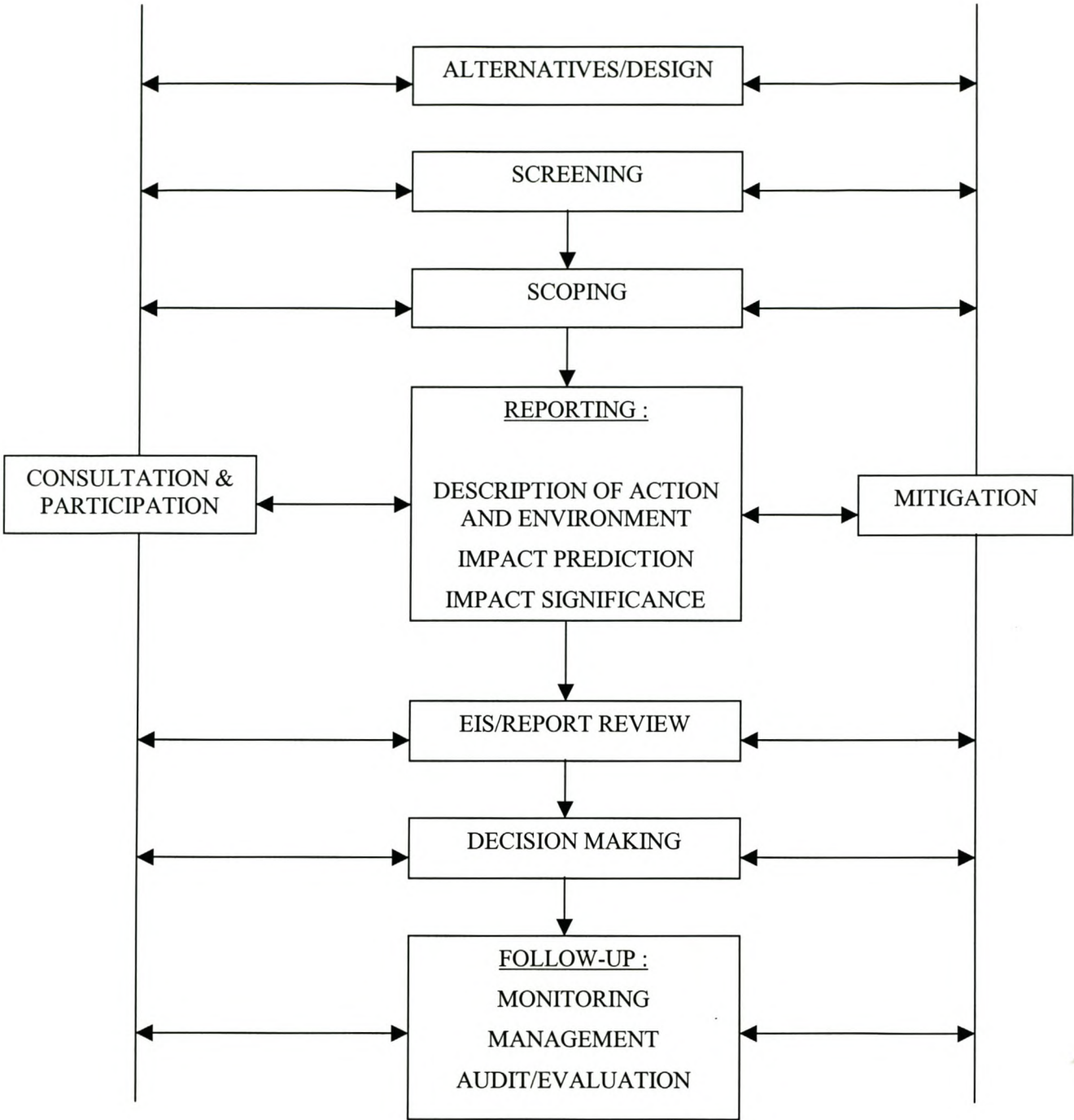
- a *project environment definition* function :

project evaluation has been shown to contribute to social change. One of the distinctive features of the EIA approach is that it can determine which factors ought to be considered relevant to the process. Participants can raise questions about factors specific to their own community and develop a new consciousness of their own environment. The EIA arena thus becomes one of problem setting rather than one of problem solving.

4.4. Public Participation at the various Stages of the Environmental Impact Assessment Process.

As outlined before, there are several different types of public participation, distinguished by the nature of the relationship between the public and the decision making body or proponent. These relationships, ranging from the provision of information, through a range of consultation to direct control, may be identified in Environmental Impact Assessment systems at different times and in different circumstances. (Wood,1995:226)

Figure 7 (adapted from Wood:1995:6) as an extension of Figure 4 in 2.7. (EIA Process) shows that public participation can be employed at every stage in the EIA process :



4.4.1. Public Participation in the Alternatives/Design Stage.

The involvement of agencies and the public in the very early consideration of alternatives and preliminary design of the proposed action is not usually feasible.

4.4.2. Public Participation in the Screening Stage.

According to Morgan (1998:95), *screening* can act as a very early opportunity to make links with local people, at a stage when proposals are still open to discussion and change. This can be useful in developing a co-operative approach to development, as opposed to the adversarial situation that tends to develop when local people only hear of a project when permits and licences are sought later in the process.

Consultation and participation in screening can normally be organised without great difficulty. (Wood,1995:227) Canter (1996:596) has formulated two main objectives for public participation in the screening stage, whereby issues are identified and public interest is sensed :

- obtain a complete understanding of how the issue is viewed by all significant interests;
- identify the level of interest in future public participation activities on this issue.

One of the major concerns with the screening process is its accountability. Many screening decisions are made within organisations, away from direct, or even indirect, public scrutiny. Consequently, when a controversial decision is made, and especially a decision which does not require an Environmental Impact Assessment for a particular project, the public have little feel why that decision was made, with the result that public confidence in the process can easily be eroded. (Morgan,1998:101)

4.4.3. Public Participation in the Scoping Stage.

Consultation and participation in scoping are commonplace in many Environmental Impact Assessment systems, where the initial identification of issues and impacts establishes the scope of the environmental impact study. Public participation activities at this stage are primarily devoted to informing the public about the project and determining what citizens feel about the need being addressed and the potential project. (Canter,1996:589)

Therefore, identification and notification of interested and affected parties is necessary. Established lists and the process of networking are probably the most effective methods of making direct contact with interested and affected parties. However, for certain proposals there are no clearly definable public, especially for projects or plans which have regional or national implications. In these instances, notifying the public through advertisements in the press and media may be the most appropriate approach. (Department of Environmental Affairs and Tourism,1992d:6)

According to Beanlands (1988:35), the interpretation of impacts should be extended beyond the limits of professional interests by ecologists and should emphasise those environmental attributes perceived to be important by society. The primary concern of the public with respect to environmental matters is human health and safety. All others will be subordinate when man's health is in jeopardy as a result of a proposed development. Equally, special interest groups will usually gain broad support in their concern for rare or endangered species on the basis that mankind has special custodial responsibilities regarding their preservation. These recurring themes ultimately influence the process of defining the significance of public impact during the scoping exercise.

The World Bank's Operational Directive (4.01) on Environmental Impact Assessment requires that affected groups and local NGO's are involved during the scoping stage to identify key issues and to develop EIA 'Terms of Reference' (TOR). A preliminary government inter-agency meeting determines the parameters of the public participation process, after which draft TORs are then disseminated, and follow-up meetings are held to discuss changes and additions to the issues already identified. (The World Bank,1993:3)

For public scoping, simple methods may suffice for describing, synthesising and communicating information on the pre-project environment and the potential impacts. These methods may include the use of checklists, matrices and networks. Depending on project scale and complexity, baseline studies or other inventories of the environmental setting will be undertaken. This component of Environmental Impact Assessment is frequently criticised as inadequate and flawed, due to, for example, superficial 'one-off' surveys which lack intensive study and/or monitoring in the identification of key ecosystem components, habitats and communities. Thus, objectives-led or decision-oriented scoping is important in the setting of appropriate

terms of reference and assists participating agencies and the public in focusing on their key responsibilities and mandates. These early reference points for structuring the study approach can yield the right information at the right time. (Sadler,1996:115)

It is important to note that the earlier public input, within a study, is solicited, the greater the likelihood that the study will be completed on schedule and within budget and will be socially and politically acceptable in the local populace. Therefore, an adequate budget should be allocated for the scoping process, since investment in initial problem definition with local officials and other affected parties usually produces substantial benefits in a clearer understanding of project needs and avoidance of unnecessary costs or misguided efforts. (Bregman and Mackenthun,1992:44-45).

4.4.4. Public Participation in the Reporting Stage.

The Environmental Impact Assessment report or Environmental Impact Statement (EIS) is the main public document produced during the EIA process and provides both the public and statutory consultees with the basis of their own assessment of a project. (Weston,1997:185)

Public participation in EIA report preparation should lead to improved quality or at least to improved acceptability. While different EIA systems have different EIA report content requirements, it is clearly important that such provisions be specified precisely, instead of relying on the diffusion of best practice and sanctions later in the Environmental Impact Assessment process. Clear and readily accessible guidelines on EIA report preparation, content and form is not only helpful to the proponents and consultants in preparing the EIA report, but also to decision making authorities, environmental authorities, interest groups and the public. (Wood,1995:148-149;229)

Morgan (1998:171) argues that most Environmental Impact Statement authors aim their writing at the wrong audience: they assume that the work will be read almost exclusively by environmental engineers and specialists. The document should as far as possible strive to, be much more than a compendium of technical details, evoking the interest of all readers instead of only those with the appropriate technical background.

The preparation of a non-technical summary beside the technical document is one way of enhancing the level of ownership by the public. This summary is often the only part of the document that the public and decision makers will read and it should 'be such that a lay member of the public can read it and then be able to pass a considered opinion on the alternatives described and their environmental impact'. (Government of The Netherlands 1991, in : Glasson et al,1994:149)

Furthermore, the Environmental Impact Statement should be well written, specific, well presented, quantified if possible, with a minimum of technical jargon and honest and unbiased. (Glasson et al,1994:151-153)

Public participation activities at this stage are primarily devoted to informing the public about the project and determining what citizens feel about the need being addressed and the potential project. At this early stage, the baseline study records determine the environmental status quo in the area, whereby the public is given information of what is being surveyed and why. Feedback from this information is often helpful in identifying existing databases. The public's response can thus reduce the time and cost of the baseline survey. Often, citizens can also identify areas of particular local interest, which should be highlighted in the assessment report. (Canter,1996:589)

The public can also contribute by providing local knowledge of possible mitigation measures which attempt to lessen predicted negative impacts so that a more acceptable level may be established.. Simple equity demands this involvement, as the public is likely to bear the brunt of any project externalities. (Clark,1994:299)

The public can equally assist in the impact evaluation process as part of the EIA reporting. For example, by reviewing the alternatives being considered, they can ensure that no viable alternative is inadvertently omitted. Where legal standards are not in force, comments from the public can be useful in establishing project-specific criteria or maximum tolerable levels of change. Canter (1996:589) concludes that the information-feedback cycle must be maintained to hold the public's interest and prevent alienation.

Sadler (1996:118) regards evaluating the impact significance of environmental effects as part of the EIS, as perhaps the most critical component of impact analysis. The interpretation of significance is a contentious process, occupying a 'fluid

boundary between science and politics', where value judgements of public concerns are needed.

4.4.5. Public Participation in the Environmental Impact Statement/Report Review Stage.

According to Sadler (1996:125), discerning public concerns and using participant suggestions is one of the key actions and principles of Environmental Impact Statement review as a critical means of quality control.

While the approach, methods and criteria differ, formal EIS reviews focus on common aspects like the 'triple A-test' of *appropriateness* (coverage of key issues and impacts), *adequacy* (of impact analysis) and *actionability* (does the report provide the basis for informed decision making ?). (Sadler,1996:123)

For the World Bank, consultation on the draft EIS report (for category A projects) is mandated by the Operational Directive requirements and is one of the most important elements of the Environmental Impact Assessment process. Those consulted should be allowed sufficient time to review and prepare comments on the draft assessment conclusions before consultation takes place. A combination of seminars, simply written materials, visual representation, videos and scale-models are useful to decode the technical language of environmental assessments and make them understandable to non-specialists. (The World Bank,1993:4)

There is no prescription on who should carry out the review or what format it should take. It could be done by the interested and affected parties themselves, their chosen representatives and/or a panel appointed by the interested and affected parties. Public review should not be seen as a delaying tactic by these parties but, rather a way to assure that their concerns have been adequately addressed and that the factual information in the report is adequate. Hence, proponents and their consultants should understand that the democratic nature of public structures must be allowed to function adequately. (Department of Environmental Affairs and Tourism,1992c:7)

According to Devuyst (1993:165), the external review of the environmental assessment report is a cornerstone in the environmental process, although this vital

part is often omitted. The opening up of the decision making process is feared by governments and private corporations; the agencies which have exclusive access to environmental information do not want their powerful position to be affected and fear that confidential information will be misused once it reaches the general population. Still, mechanisms should be developed to improve the availability of information relevant to the environmental impact assessment process, since poor access to information hinders the development of consistent review documents and hurts the ability of practitioners to learn from experience.

4.4.6. Public Participation in the Decision Making Stage.

The direct level of public participation in this stage of the EIA process is quasi non-existent, since the final decision is ultimately made by the government. Indirectly however, environmental interest groups can influence policy through 'grassroots political power': the voters are the ultimate source of power in a representative democracy, where elected authorities are accountable to the people who elect them. A responsible legislator will want to know how many people care about the issue, why and how deeply they care. All things being equal, the more people interest groups represent, and the more committed to the issue those members are, the more effective the interest group will be in influencing decision makers. (Rubin,1997:36)

Rubin (1997:42) further argues that interest groups have been a traditional source of countervailing power. They can act as checks and balances on the activities of the government, powerful institutions and each other, trying to hold elected and appointed government officials accountable. Interest groups can foster public participation in policy making, although there may be a danger of 'demosclerosis', a slow hardening of political arteries caused by the proliferation of interest groups.

Perkins-Spyke (1999:269) observes that the benefits of power redistribution that result from the efforts of public interest groups often inure to these groups rather than the public at large. Free-rider problems also exist, because individuals may be content to pay membership dues and allow interest groups to take on issues at their discretion. Furthermore, their extensive use of litigation, expertise and ample funding

lead public interest groups to intervene in matters that often do not affect the average individual.

Another medium of influencing decision makers is lobbying. Lobbyists begin the process of influencing administrative policy making by recognising that administrative agencies are composed of people who respond to information, politics and public opinion. (Rubin,1997:169)

It must be noticed that lobbying has a controversial image: to many, lobbying has unsavoury connotations of arm twisting, backroom bargaining and trading money for influence. Yet, citizens and interest groups who lobby, are participating directly in the making of laws and the governing of the nation. They are exercising their constitutional right to petition government. Even public interest groups and individuals concerned with environmental matters are increasingly learning and using lobby skills alongside lawyers and former Members of Parliament. (Rubin,1997:149-150)

According to Crowfoot and Wondolleck (1990:20;180), lobbying creates new points of entry to decision making and a new consciousness of the citizens' unique interests. It may demonstrate citizen power by putting pressure on the traditional authorities. However, this informal strategy to persuade decision makers is not always a means of participatory consensus-building in pursuit of the interests of all the involved parties.

Finally, it often appears that Environmental Impact Assessments are undertaken on the assumption that there is only one major project decision, that is, a single point in time when the results of the environmental assessments are considered by those responsible for project planning. The reality, however, is that there is a multitude of decision points shared among various agencies in the public and private sectors. This decision making network, spread out in time and among various interested parties, is even more complex when it involves international aid projects since another level of bureaucracy and decision making is added. (Beanlands,1988:42)

4.4.7. Public Participation in the Follow Up Stage.

Given that Environmental Impact Assessment should be thought of as an interactive ongoing process rather than a static process to obtain an authorisation, there is clear evidence that the public can play a key role in ongoing monitoring activities.

The follow up stage involves measuring the actual versus the predicted impacts as well as how the community as a whole and the individual residents have adapted to change. The use of key informants, community leader surveys and questionnaire surveys are three methods the assessor could use to determine the accuracy of pre-project analysis. Monitoring can also provide data to be incorporated into the feedback process by government agencies to keep policies, decisions and programmes responsive to unforeseen changes in the impacted community. (Burdge and Robertson,1990:87-88)

Reviews of the accuracy of predicted impacts in Environmental Impact Statements have suggested that only a few forecasts were grossly inaccurate. Yet, only 30 per cent of the experienced impacts were close to their forecasts. These findings suggest that feedback from impact prediction auditing could be used to improve the forecasting of impacts for future projects. (Canter,1996:33)

For World Bank projects, local NGOs or representatives of affected groups may participate during project implementation in monitoring and evaluating the measures recommended by the EIA report. A plan for continued information dissemination, consultation and participation was developed, giving these NGOs an important role in monitoring the impacts on the natural environment. (The World Bank,1993:4-5)

Dipper, Jones and Wood (1998:732-734) claim that the focus on *pre*-decision stages of environmental impact assessment and the neglect of *post*-decision monitoring and post-auditing stages, has severely constrained the maturation of Environmental Impact Assessment systems world-wide. Post-auditing can contribute to the overall learning curve by adopting a trial-and-error approach to environmental impact prediction, supported by monitoring the uncertain natural environment. By highlighting shortcomings, it can indirectly pressure developers into improved

commitment to mitigation measure implementation and project management, such information being vital in order to increase the credibility of, and public confidence in the EIA process.

Moreover, people do have an interest in proposals during the post-decision follow-up stage. They need to be able to voice their concerns, if necessary, over operational problems and the public participation strategy should be developed to provide appropriate mechanisms for such involvement. The proponents for instance, can maintain good public participation procedures after the project was granted planning permission, with letters to local residents and exhibitions to keep people informed of progress. (Morgan,1998:165)

4.5. The Enabling Environment for Effective Public Participation Programmes.

Before discussing factors and indicators for measuring the effectiveness of public participation programmes in the Environmental Impact Assessment process, it is important to highlight four main aspects of the enabling environment. They are the context in which the public participation component operates, the appropriate legislative framework, the capacity to carry out the public participation programme, and the adequacy of resources and social expertise.

4.5.1. Appropriate legislative framework.

Without an appropriate legislative framework, public participation in Environmental Impact Assessment is often difficult, although experience suggests that well-designed projects can promote effective participation even in the absence of specific EIA legislation. (The World Bank,1993:7)

It is important to have a closer look at the so-called 'public interest environmental law movement' in the context of environmental legislation. Public interest environmental law places emphasis on participatory decision making, with

regard not only to the enforcement through court cases but also regarding the formulation of policies and rules and their implementation. The public interest movement is concerned with justice between litigants and the underlying environmental interests raised in *litigation*. (Robinson,1995:295-296)

While litigation is important to promote public awareness of and political pressure for sustainability, it is by no means the only or preferable strategy for environmental conflict management. Often, law has been reactive and failed to protect the environment, due to the fact that growth has higher priority than environmental protection in modern societies. As Robinson (1995:296) puts it: 'Legal responses to environmental problems are regarded as cosmetic surgery upon a patient with a vital illness'.

A possible beneficial alternative to resolve environmental disputes, is the use of *mediation* as an intervention tool in environmental dispute settlement. An acceptable, impartial third party without decision making power assists to reach a mutually accepted settlement. When compared with litigation, mediation results in high settlement rates, a high degree of satisfaction by the participants, and indicated savings for all parties. (Sipe and Stiffler,1995:141;154)

Another fact to consider is that non-compliance, non-implementation and non-enforcement with international environmental law, including both public international law treaties and domestic environmental laws in different countries, is argued to be the rule, not the exception. (Robinson,1995:295)

According to Wood (1995:229), it is clear that the role of public participation in the success of environmental legislation in influencing decisions on actions, owes much to two factors: the first is the right to participate and to gain access to relevant documentation, and the second is the public's right of appeal to courts over Environmental Impact decisions.

Webler and Tuler (2000:2-3) highlight in this regard the principle of 'fairness' as a discursive standard criterion (see Habermas). Fairness refers to the opportunity for all interested or affected parties to assume any legitimate role in the decision making process. What are people permitted to do in a deliberative policy-making process? Four necessary opportunities for action by individual participants must be available. They are to :

- attend (be present);
- initiate discourse (make statements);
- participate in the discussion (ask for clarification, challenge, answer and argue); and
- participate in the decision making (resolve disagreements and bring about closure).

Attendance is primary, and every process must decide who has a legitimate right to participate. Fair participation in agenda setting and rule making means that all have the same opportunity to take part in these activities. Fairness in the discussion and debate refers to making sure that everyone has an equal chance to make their voice heard and to shape the final decision.

Laws (1996:70) points out that legitimacy, representation and fairness hinge on practices as well as on institutional opportunities. Participants must understand their role, their responsibilities to other parties and the opportunities available in- and outside the deliberative process. The need to revise understanding and amend agreements through monitoring arrangements, contingent (or amendable) commitment and provisions for dispute resolution must be acknowledged.

4.5.2. Capacity to carry out Public Participation Programmes.

Experience demonstrates the importance of local capacity to carry out consultation and participation. Countries in which effective Environmental Impact Assessments were conducted, had strong national institutions that could take on the management responsibility for the participative process (which sometimes took six to twelve months). (The World Bank,1993:7)

The United Nations Environment Programme (1993a:17) regards capacity building as a major challenge to reach coherence and co-ordination in the Environmental Impact Assessment process.

While international consultants could play a useful advisory role in setting up the process, the key players need to be in-country. (The World Bank,1993:7) The

EIA-process requires an institutional set-up, establishing and strengthening competent environment authorities. A central environmental authority should enhance co-ordination, accessibility and communication amongst sectors and stakeholders at institutional, national and regional levels. (UNEP,1994:14)

4.5.3. Adequate Resources.

According to Canter (1996:30), one of the uncertainties in the planning and conducting of Environmental Impact Assessments is related to appropriate costs for such studies. There has never been any systematic development of a cost algorithm which could be used for estimation purposes. A rule of thumb is that the Environmental Impact Statement will probably cost in the order of one per cent or less of total project costs.

Contrary to the belief that public participation meaningfully increases the cost of the project, World Bank studies conclude that public participation is labour-intensive rather than capital-intensive. (Del Furia and Wallace-Jones,2000:458)

Still, public participation is frequently restricted by resource disparities. Limited access to expert technical advice hinders a credible input to the consultation process. 'Intervenor Funding' mechanisms now need to be explored. These refer to the process whereby intervenors, groups or individuals representing the public interest, are given financial assistance to help redress inequities in the decision making process. This would make for a broader, more credible public input by aiding the public to understand and make a response to the proposal's implications. Intervenor funding can for instance stipulate that the developer is obliged to contribute to the funding, without having any influence on how the money is spent. (Clark,1994:305-306)

The United States Environmental Protection Agency (EPA) for example, provides a 'resource pool' of up to US \$ 50,000 to help cover the costs of participation and technical studies in its negotiated rule making process. This money is managed by an independent body, the American Arbitration Association, and represents a combination of EPA-funds and contributions by private foundations. (Crowfoot and Wondolleck,1990:260-261)

From the public's perspective, there is a fundamental problem, which could partly explain the large-scale apathy towards public participation programmes: whoever does participate is likely to experience a drain in terms of time and personal costs. Not only does it take time to become comfortable with the technical nature of many issues, but personal costs tend to become up-front, affecting the outcome of public participation. (Perkins Spyke, 1999:269)

4.5.4. Social Science Expertise.

Experience also suggests the importance of drawing upon social science experience. The Environmental Impact Assessments of the World Bank that have been conducted in more participatory ways, have included social scientists on their teams. The skills of social scientists are mostly used in four primary areas :

- *Identification of relevant groups :*

The social scientist can serve a vital role in defining the key parameters about who should be consulted and how they should be consulted. Methods for this can include: social surveys, participant observation, mapping, discussion groups, interviews with authorities and socio-cultural profiling.

- *Participation planning :*

Based on detailed group and project knowledge, a social scientist can design a participation process throughout the project cycle. Who will be involved ? How will their ideas be elicited ? What, when and how will decision making authority be delegated to them ? Tasks may include: stakeholder analysis, participatory rural appraisal and public relation campaigns.

- *Conflict management :*

The social scientist defines traditional mechanisms for making agreements, for negotiations and for managing conflict in affected communities. Understanding and working within cultural expectations and practices may enhance participation processes, especially in projects where there are multiple and competing stakeholders.

- *Institutional analysis* :

It may be essential to analyse the capacities of groups involved in project design and implementation. Such analysis includes : the strengths of organisations, their ability to act as effective representatives of affected communities, and the relationships among groups, such as information flows and decision making authority. (The World Bank,1993:7-8)

4.6. Effectiveness of Public Participation in the Environmental Impact Assessment Process.

This final section examines factors and indicators, verifying the effectiveness ('degree of success in the completion of a task') of public participation in the Environmental Impact Assessment process. The starting point for an analysis of effectiveness of public participation in EIA is that public participation is effective when the goals and objectives of involving the public in EIA procedure are satisfied.

The development of an *analytical framework* is an attempt to draw together the main threads of the earlier parts by translating the goal and objectives of public participation in EIA into evaluative parameters and indicators, which, in turn, will be checked in country-specific contexts during later chapters.

In undertaking the country studies, the analytical framework is going to explore four main clusters of factors, contributing towards effective public participation in Environmental Impact Assessment :

The appropriate legislative framework first examines the specific legal provisions for public participation. The indicators used to verify whether or not an appropriate legislative framework is present, are as follows :

- are the provisions in a given country mandatory or discretionary ?, and
- is it a secure legal basis ?

The institutional framework further reviews the relevant competencies in the country's institutional set-up and the role of the civil service as implementing agencies

of EIA Regulations. The indicators used to verify whether the institutional framework is conducive to effective public participation in the EIA process are as follows :

- is there a core environmental agency and/or participating authorities for management of the EIA system ? and
- what are the capacities and/or impediments of the implementing authorities ?

The public is another important factor, whereby the nature of the public in a given country, the public participation techniques usually employed to involve the public and the opportunities for the public to resolve environmental disputes are discussed. The indicators used to examine the role the public can play in the environmental decision making process are as follows :

- what is the rationale for public participation by the public ?
- what are the attitudes and capacities of the public ?
- which public participation techniques are commonly employed to involve the public ? and
- does the public have access to justice as a tool for dispute resolution ?

Lastly, formal and informal public participation opportunities in the EIA process are going to be examined, whereby the various modes of public participation during the screening, scoping, reporting, reviewing/decision making and follow up stages are highlighted. The indicators used to examine the existence of public participation opportunities during the EIA process are as follows :

- do the public have formal and informal channels to participate in the screening, scoping, reporting, reviewing/decision making and follow up process ?

<u>ANALYTICAL FRAMEWORK FOR PUBLIC PARTICIPATION IN ENVIRONMENTAL IMPACT ASSESSMENT.</u>		
GOAL : Improvement of Effectiveness of Public Participation in Environmental Impact Assessment.	FACTORS CONTRIBUTING TOWARDS EFFECTIVE PUBLIC PARTICIPATION IN EIA :	VERIFIABLE INDICATORS
OBJECTIVES : <ul style="list-style-type: none"> - Understand the perception of proposed activity. - Resolve conflict and reach consensus. - Identify interested parties and their concerns and values. - Collect information about local environment and local community. - Define problems and issues for EIA (scoping). - Identify alternatives. - Validate quality of EIA report and obtain feedback (review). - Inform and educate on the project and the decisions. - Social learning. 	Appropriate Legislative Framework <ul style="list-style-type: none"> - National, primary legislation. - International, secondary legislation. 	<i>Are there specific provisions for public participation ?</i> <i>Mandatory ? Discretionary ?</i> <i>Is it a secure legal basis ?</i>
	Institutional Framework : <ul style="list-style-type: none"> - Relevant Competencies. - Role of Bureaucrats. 	<i>Is there a core environmental agency and/or participating authorities for management of the EIA system ?</i> <i>What are the capacities and/or impediments of the implementing authorities ?</i>
	The Public : <ul style="list-style-type: none"> - The Nature of the Public. - Public Participation Techniques. - Environmental Dispute Resolution. 	<i>What is the rationale for public participation by the public ?</i> <i>What are the attitudes and capacities of the public ?</i> <i>Which public participation techniques are used ?</i> <i>Does the public have access to justice as a tool for dispute ?</i>
	Formal and Informal Public Participation Opportunities in the EIA Process: <ul style="list-style-type: none"> - Screening - Scoping - EIA Report - Review and decision making - Follow up 	<i>Do the public have formal and informal channels to participate in :</i> <ul style="list-style-type: none"> - Screening ? - Scoping ? - EIA Report ? - Review and decision making ? - Follow up ?

At this stage, it is important to bear in mind that not all questions as verifiable indicators are of equal importance, and in some circumstances, full adoption in theory may not be followed by full implementation in practice. Secondly, most of these indicators are rather *qualitative* than quantitative and whether or not the relevant data can be measured and verified in the available academic literature, remains to be seen.

Still, it is suggested that the proposed analytical framework provides a useful tool to outline the salient features of public participation in the three existing

Environmental Impact Assessment systems. Therefore, this analytical framework will further serve as a frame of reference for the country-specific approaches in the following three chapters, namely analysing the various components in the public participation programmes in Environmental Impact Assessment systems in the United Kingdom, South Africa and the United States.

4.7. Conclusion.

By examining the need and role of public participation within the Environmental Impact Assessment system and its relevance at the various stages of the EIA process, it is clear that the public plays a central role in Environmental Impact Assessment, both from a strictly procedural perspective as well as from a functional perspective. As Woods, one of the EIA experts, comments : “*Environmental Impact Assessment without public participation is not Environmental Impact Assessment*”.

For further analytical purposes, it is vital to compile all the information and insights obtained so far, into a concise and clear analytical framework, in which goals, objectives, factors and indicators are stipulated. This frame of reference will enable the researcher to compare the effectiveness of public participation programmes in EIA within their country-specific context.

Chapter 5 : Public Participation in Environmental Impact Assessment in the United Kingdom.

5.1. Introduction.

Based on the analytical framework developed in the previous chapter, the various factors contributing towards effective public participation in Environmental Impact Assessment will be analysed in the next three chapters, dealing with the British, South African and American contexts. Indeed, EIA and the role of public participation is best understood by comparing how different jurisdictions have instituted these themes.

In the United Kingdom, EIA was introduced into an existing system of traditional development control with fixed decision making procedures. It is appropriate to examine the two pillars on which the EIA system is based. First, the appropriate legislative framework as a legal basis for public participation will be reviewed, both considering the domestic devolution agenda and the integration with the European Community. Second, the institutional set-up in the UK determines the appropriate implementation of EIA legislation. Therefore, relevant competencies and the role of the civil service will be examined. The core part of this chapter reviews 'the public' as the cornerstone of effective public participation; and seeks to determine the nature of the British public, the most commonly employed public participation techniques and the most effective way to resolve environmental disputes. Last but not least, formal and informal public participation opportunities at the various stages of the Environmental Impact Assessment process will be explored, in order to establish a whole and meaningful picture of the way in which the public can participate effectively in the British environmental decision making process.

5.2. Background.

Britain is a relatively small but intensively developed country and it is perhaps not surprising that environmental awareness arose early, as exemplified by the development of the 1947 Town and Country Planning Act. (Bulleid,1997:26)

The highly developed planning system in the UK has undergone an important change in recent years with the shift to a plan-led system of development control. Following the introduction of the Planning and Compensation Act (1991), the Department of the Environment intends that local authorities adopt district-wide local plans, of which Environmental Impact Assessment is an essential element. (Russell,1999:529-530)

In that regard, Weston (1997:20) addresses the question of how EIA, a rational, systematic environmental management process, is integrated into a sometimes irrational planning system which is in essence a political process : after all, planning determines who wins and loses in the constant and continuing battle over the crucial resource of land. That struggle takes place because of the often adversarial nature of the UK planning system, where developers must pit their power, influence, political and legal judgment and sometimes cunning nature, against environmentalists, residents, interest groups and politicians. In such a system, the 'science' of predicting individual impacts within Environmental Impact Assessment is largely secondary to the politics of the decision making process, particularly when those predictions must first of all be believed by sceptical opponents and then attributed weight in the balancing act which is UK development control.

Campbell and Marshall (2000:324) further argue that the long-standing awareness of the potential importance of public participation in the British planning process, has recently been given a boost from the New Labour Government. Government statements appear to be placing stress on 'democratizing' local government through facilitating community involvement. This devolution agenda of the Labour administration involves the delegation of governmental powers without the relinquishment of sovereignty within the British nation state.

In practice, the UK has now entered a complex period of the modernisation of administrative, governmental and policy-making machinery, underpinned by an

ideological commitment to openness, inclusiveness and a 'third way'. New Labour's promises to commence a comprehensive period of devolution for the four countries Scotland (1997), Wales (1997), Northern Ireland (1999) and England (1998), have been mirrored by proposals to enhance the regional level of governance, modernise both the planning system and local government, while simultaneously committing the government to an enhanced form of integration with the European Community. (Tewdwr-Jones,1999:417-418).

Lloyd and Illsley (1999:413) conclude that times have changed dramatically in the UK, as a consequence of local government reorganisation, fragmentation of institutional responsibility, different population catchments and geographical areas, together with the processes of decentralisation.

This emphasis on the importance of local government in the UK is significant for further investigation of the role of the public in environmental decision making.

British environmental policy cannot be understood without placing them in their national, European and global context.

Within the UK, a new consensus has emerged within the planning profession to pay more attention to conservation and environmental protection. This has been strongly driven by the 1990 White Paper 'This Common Inheritance' (Department of the Environment) and the subsequent UK Strategy for Sustainable Development (Department of the Environment,1994), which was, itself, a response to Agenda 21, adopted at the Rio Earth Summit. This new environmental agenda has brought with it a need to employ suitable indicators of sustainability, as a key mechanism for assessing environmental impact and capacity. (Wong,2000:224)

The 'Environmental Appraisal of Development Plans : A Good Practice Guide', published by the Department of the Environment in 1993, illustrates this environmental agenda, by describing a series of tasks which local authorities are advised to undertake with the promise of a rigorous, comprehensive, simple and flexible process that will yield relatively rapid results. (Russell,1999:531)

At the European Union (EU) level, the UK has ceded competence for many environmental resource matters to the EU, which now has extensive and sometimes exclusive competencies in the environmental field. The result has been many

directives, other legislation and policies which have been fundamental in their impact on the approach in the United Kingdom. (Stead and Nadin,1999:352)

According to Lowe and Ward (1998, <http://www.sussex.ac.uk/Units/gec/pubs/briefing/brief-20.htm>), there are indications that UK-EU environmental relations may have entered a new and more mature phase. First, after 25 years of UK membership, considerable adaptation has taken place in British procedures and practices to adjust them to European frameworks. Second, the election of a Labour government with a strong and positive outlook towards both the promotion of environmental policy and European integration, means that for the first time the environment has been placed at the forefront of Britain's European diplomacy.

Lowe and Ward (1998,<http://www.sussex.ac.uk/Units/gec/pubs>) also analysed the Europeanisation of British environmental policy. Their major findings revealed :

- in the past, British governments tended to take a reactive approach to European Community (EC) environmental policy, reflecting British economic and industrial priorities in Europe and defending established domestic regulatory procedures;
- Britain's previously fragmented and pragmatic approach to environmental problems has been challenged by the weight of European policies and the establishment of systematic legal frameworks, as exemplified by the Environmental Impact Assessment Directive, which will be discussed later;
- these European Directives result in significant changes in the procedures and principles of environmental policy; they require that absolute legal standards be put in place for a range of environmental protection parameters. This has involved a shift from flexibility to formality in formulating and implementing the objectives of environmental policy;
- European integration has led to consequences such as the adoption of higher standards of protection and the restructuring of environmental administration in the UK;
- the environmental policy style within the European framework has greatly reduced the scope for administrative discretion in implementation and has helped to create a more transparent system that is much more open to public and judicial scrutiny; and

- the 1980s reputation of the “Dirty Man of Europe” (more for its recalcitrance towards the Europeanisation of environmental policy than for its objective environmental performance) has been cast off, and the UK has assumed a leading role in environmental policy.

At the global level, the UK is signatory to many international treaties and agreements, which have varying degrees of compulsion through international law. (Stead and Nadin,1999:352)

5.3. Appropriate Legislative Framework for Public Participation in Environmental Impact Assessment in the UK.

In order to capture the legal basis on which public participation is based upon within the EIA process, it is important to highlight both national and international relevant legislation.

5.3.1. Environmental Impact Assessment Directive of the European Community.

According to Weston (1997:5), a formalised system of EIA was resisted by successive British governments because, they argued, the UK planning system had made an assessment of the environmental impact of development through the development control process, and Environmental Impact Assessment would only add unnecessary complications to a well tried and holistic approach.

After not less than 20 draft directives (often due to subsequent negotiations between the European Commission and the British government), the final EIA European Directive (85/337/EEC) was adopted in 1985, representing the first European Union intrusion into the planning domain with major repercussions on member states’ decision making and practice. The UK was bound by EU-law since it joined the European Community in 1973. (Wood,1995:32)

By introducing the EIA Directive across the whole Community, the European Union hoped to ensure that the same development restraints and conditions operated equally throughout, so that no single state would have more rigorous regulation than others. (Weston,1997:9)

The Directive provides a skeletal legal framework and leaves a great deal of detail to be determined by member states; it is left to them to implement the requirements of the EIA Directive in whatever legislation they consider to be appropriate. (Wood,1995:37)

Specific public participation requirements under the provision of the EIA Directive are :

- *Article 6(1) :*

‘Consultation and participation is limited to commenting upon the EIA Report. Member states are required to designate the environmental authorities which should receive copies of the environmental information and who must be consulted for their opinion on the consent application’.

- *Article 6(2) :*

‘Member states must ensure that both the consent application and the environmental information are made available to the public and that the public concerned is given an opportunity to comment before the project is initiated’.

- *Article 7 :*

‘Member states are required to provide the above information, as a basis for consultation, to another member state where the project is likely to have significant effects on its environment’.

- *Article 10 :*

‘There are provisions for the protection of industrial and commercial secrecy’.

(Wood,1995:40)

Ultimately, the Directive requires that the public or interested parties be given opportunity to comment on requests for development consent, and then informed of the outcome. This could be done by publicising proposals in local newspapers and reporting decisions via a website. In addition, those who have submitted comments

could be advised in writing of the outcome. (The National Assembly for Wales,2001, www.wales.gov.uk/keypubconsultation/index.htm)

Many of the original provisions have been amended and the net effect is, according to Brouwer (1988), in Wood (1995:35) ‘a weak compromise. It is more the result of the cumulative resistance from the development promoters and bureaucracies in the member countries than a synthesis of the best ideas for the protection of the environment’.

From March 1999, a new phase in Environmental Impact Assessment in UK was entered with the revised Regulations to implement the amended European Directive 97/11/EC (CEC,1997). The most relevant article concerning public participation explains :

Articel 9 :

‘A competent authority must make public the main reasons and considerations on which decisions are based, together with a description of the main mitigation measures’. (Glasson,1999:371)

Wood (2000:737) states that since the implementation of Directive 85/337/EEC, Environmental Impact Assessment is now a firmly established process; and the implementation of the amended Directive 97/11/EC indicates that it will continue to thrive in the UK.

5.3.2. Environmental Impact Assessment Legislation in the UK.

Weston (1997:4) argues that planning, as a means of managing the environment, is only as effective as the powers granted to it by government and the socio-legal system in which it operates. This can be a fundamentally important restriction on environmental management; especially when the law, as in the UK, traditionally only sees the environment in terms of property rights and where environmental decisions are made on the basis of a policy principle that sets a presumption in favour of development.

A further and significant feature of the UK’s legal tradition is the way the courts take a very literal approach to the interpretation of legislation and regulations.

The semantic meaning of individual words is central to the way courts make decisions and set precedents. This is a particularly important feature of the law when UK courts are interpreting EU legislation. The directives and regulations which come from Brussels are based upon a wholly different European tradition which relies more on the context and the spirit of the law than on the meaning of individual words – the letter of the law. (Weston,1997:4) This difference in approach is crucial to an understanding of context-specific environmental dispute resolution in a later section.

For projects requiring planning permission, the European Directive was given legal effect in England and Wales through the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988, in Scotland through the Environmental Assessment (Scotland) Regulations 1988 and in Northern Ireland through the Planning (Assessment of Environmental Effects) Regulations (Northern Ireland) 1989. (Wood,1995:49) According to Glasson (1999:367-368), this area of overlap and conflict in legislation can cause confusion; several regulations may also apply to the different components of a particular project.

The Environmental Impact Assessment Regulations apply to two separate lists of projects, based on Annexes I and II of the Directive. (Wood,1995:49) The statutory requirement for EIA applies to the types of projects described in the Environmental Impact Assessment Regulations (Schedules 1 and 2). EIA is always required for a Schedule 1 project which by virtue of its nature or scale is always likely to have significant environmental effects. EIA is only required for a Schedule 2 project if it is judged likely to have significant environmental effects. For the overwhelming majority of development projects however, normal planning powers are perfectly adequate to gain environmental information and EIA is not required. (Scottish Executive, 1999,<http://www.scotland.gov.uk/library/pan/pan58-01.htm>)

The EC Directive 85/337 has been implemented in the UK through over 40 regulations. Different regulations apply to projects covered by the planning system, projects covered by other authorisation systems and projects not covered by any authorisation system but still requiring EIA. Since the implementation of the European Directive in the UK in 1988, over 3000 Environmental Impact Statements have been produced. Most (approximately 70 per cent) of the categories of projects included within the Directive obtain permission to go ahead through the Town and

Country Planning system and are subject to these Regulations. (Glasson,1999:363;367-368)

Under the terms of Regulation 9 of the 1988 Regulations, if a developer disagrees with Local Planning Authority (LPA)'s decision that an Environmental Impact Statement is required for a specific project, they may seek a Direction from the regional Secretary of State as to whether an EIS is required. (Weston,2000:191)

Advice on procedures and the implementation of the EIA Regulations in England and Wales is presented in the Department of the Environment Circular 15/88 and in a Guide to the Procedures (1989). An equivalent circular applies in Scotland. These circulars set out indicative criteria and thresholds to help determine whether certain projects (Annex II projects) should be subject to Environmental Impact Assessment and also set down the nature of prescribed consultation and publication arrangements. (Wood,1995:49)

The terms of both the 1985 EEC Directive on EIA and the 1988 UK Regulations include 'the effects on human beings' among the matters to be included in Environmental Impact Assessments. A liberal interpretation of this would include such matters as community severance and economic benefits. However, these traditional preoccupations of planning control have rarely been fully integrated into EIA in the UK. Planning negotiations over the EIA must nevertheless be conducted with an awareness of these contradictions and decisions will have to be made on how to respond to criticism, comments or requests for information from different parties to the process. (Lee-Wright,1997:56)

The implementation of the amended EIA Directive and the subsequent UK Regulations and Circular, address a number of weaknesses, such as the limited and discretionary consideration of alternatives in the Environmental Impact Assessment process. Progress on the consideration of cumulative impacts, improved consultation and participation and on the simplification of regulations, should also result. Glasson (1999:372) concludes that pressure groups and the general public should benefit from improved information and earlier consultation, which may lead to a perception of more fairness and equity in an EIA system, which will be less easily bypassed in the approval process.

5.3.3. The Aarhus Convention.

“Although regional in scope, the significance of the Aarhus Convention is global. It is by far the most impressive elaboration of principle 10 of the Rio Declaration, which stresses the need for citizen's participation in environmental issues and for access to information on the environment held by public authorities. As such, it is the most ambitious venture in the area of 'environmental democracy' so far undertaken under the auspices of the United Nations”. Kofi A. Annan, Secretary-General of the United Nations, 25th June 1998.

The UN/ECE (United Nations/Economic Commission for Europe) Convention on Access to Information, public participation in decision making and Access to Justice in Environmental Matters, was adopted in June 1998 in the Danish city of Aarhus. This Convention has been signed by more than 30 states, including all EU-member states, as well as by the European Commission representing the European Community. The states involved are required to ratify the Aarhus Convention and the current expectation is that entry into force will take place during 2001. (United Nations Economic Commission for Europe, 2000, <http://www.unece.org/env/pp/>)

The Aarhus Convention acknowledges that sustainable development can be achieved only through the involvement of all stakeholders by forging a new process for public participation in the negotiation and implementation of international agreements. The Convention is not only an environmental agreement, it is also a Convention about government accountability, transparency and responsiveness. The Aarhus Convention grants the public rights and imposes on member states and public authorities obligations regarding the three pillars of public participation that were already included in the Principle 10 of the Rio Declaration : access to information, public participation and access to justice. (United Nations Economic Commission for Europe, 2000, <http://www.unece.org/env/pp/>)

The United Kingdom signed the Aarhus Convention and strongly supported the objectives of the proposal, consolidating and enhancing the rights of the public to participate in the decision making process in a range of environmental matters. These include general provisions concerning the drawing up of certain plans and programmes and also detailed amendments for public participation in Environmental Impact Assessment. (Department of the Environment, Transport and the Regions, 2001, <http://www.environment.detr.gov.uk/ecdpp/index.htm>)

The Convention builds on three pillars. The first pillar, *access to information*, confers rights on citizens to access environmental information and duties on public authorities to collect and disseminate such information, in response to a request without having an interest to be stated. Exemption can only be qualified, where confidentiality is protected by law in order to protect a legitimate economic interest. Systems for the provision of information are to be transparent and information is to be effectively accessible. (Brady, 1998b:71)

The second pillar, *public participation in environmental decisions*, sets out public participation requirements to inform the public concerned in a timely and effective way, when all options are still open in the preparation of environmental plans and programmes. (Brady, 1998:71-72)

The third pillar, *access to justice*, will be reviewed under section 5.5.3. Environmental Dispute Resolution in the UK.

British Minister of Environment Meacher described the Aarhus Convention as ‘a crucial milestone on the road to a Europe which is more open and closer to the people’, and he further considered the Convention ‘a necessary catalyst in all our societies to help the public to understand government decisions’. (Brady, 1998:186)

5.4. Institutional Framework in the UK.

Jeremy Waters of the European Environmental Bureau states : ‘Parliamentary, executive and judicial structures are only the flesh and bones of the body politic in a democracy. Transparency and public participation, underpinned by real accountability through the courts, are its food and drink’. (Brady, 1998:174) Still, it is important to highlight the approach to planning within its institutional framework, adopted in the UK.

The procedure is based on the legal tradition of prosecutor versus defendant, with the planning authority acting as judge and jury. The regulatory process involves both the planning authority (the County or District Council) and the environmental agency in authorising new projects. The proposer has to draw up an Environmental

Impact Assessment under the terms of the European Directive, as discussed before. (Gilbert,2001: <http://www.sussex.ac.uk/Units/gec/pubs/briefing/brief-10.htm>)

Most relevant competencies within the UK are divided between the departments of the four countries and their agencies, but a national position is given in 'Sustainable Development: the UK Strategy' (Her Majesty's Government,1994) and annual monitoring reports. Since its publication, there has also been increasing attention paid to providing national policy frameworks in particular sectors through such documents as the biodiversity strategy and waste strategy. A standing committee of the Cabinet has also been established on environmental policies, together with a 'green minister' for each department of government, charged with monitoring the environmental implications of sectoral policy. (Stead and Nadin,1999:352)

Appendix IV shows 'Institutional Complexity – Examples of Institutions and Instruments Affecting Environmental Resource and Energy Management in the UK'. (Stead and Nadin,1999:353)

The analytical framework as outlined in the previous chapter, has stipulated the role of *bureaucrats* as a parameter of contribution towards more effective public participation. The UK civil service has traditionally been centralised with a common recruitment and promotion policy and a single career and salary structure. However, the British bureaucracy has recently developed through a process of reform and adaptation with the transfer of government functions to private bodies via market testing and contracting out. The launching of the Next Steps initiative in 1988 was a significant milestone which began dismantling a unified national administration by restricting ministries to their core policy functions and handing over responsibilities to executive agencies. By 1996, 70 per cent of UK's civil servants were working in these Next Steps agencies, with a growing body of work being contracted out to private bodies. The Citizen's Charter of 1991 further attempted to compensate for inefficiency and unresponsiveness in public administration through the use of performance targets and quality measurement, accompanied by a substantial increase in the role of 'quango's' (quasi-autonomous non-governmental organisations). (Heywood,1997:345-348)

Despite these innovative institutional reforms, Glasson (1999:368) is concerned that some local planning authorities may not be as competent as required to assess the quality of Environmental Impact Statements, by virtue of their limited resources, lack of expertise and very intermittent consideration of EIA-activity. Of the more than 500 UK local planning authorities, many (approximately 250) have received no more than one or two EISs since 1988.

Moreover, there is some ambiguity about how far up the ladder of citizen participation (Arnstein,1971) the British government is advocating local authorities to go. As Arnstein shows, there is a world of difference between different forms of so-called citizen participation which may range from tokenism, through information provision and consultation, to shared or delegated power over certain decisions. The public participation element of the democratic renewal agenda in the UK has yet to be embodied by legislation. The lack of clarity about how the term 'participation' is to be interpreted, leaves plenty of scope to local authorities to either prioritise or marginalise public participation. (Leach and Wingfield,1999:47)

Yet, few would deny the commitment of the Labour government to promote best practice in public participation, deliberately stimulated by local authorities. The Department of the Environment, Transport and the Regions provides a substantial number of guides and sources of advice about public participation (for instance, Local Agenda 21 Case Studies) in order to 'guide the guides'. Furthermore, the Local Government Democracy Network is a means of :

- promoting good practice;
- supporting and encouraging innovation;
- networking advice and information;
- identifying areas for further research.

(Department of the Environment, Transport and the Regions,1998, <http://www.local-regions.detr.gov.uk/epplg/2.htm>)

Leach and Wingfield (1999:53) interviewed British civil servants and observed that some express a genuine personal commitment to enhanced public participation, whereas others – like rank and file – are more likely to feel threatened by the new emphasis on public participation. Hence, several officials explained the

necessity of a 'softly-softly' approach, acknowledging the need for a public participation strategy, but introducing public participation measures on an *ad hoc* basis, exploiting opportunities and gradually building up momentum. Then, by process of accretion, a commitment to public participation, evidenced by a wide range of examples, would have become apparent and a switch from informal (implicit) strategy to a formal (explicit) one would become possible.

Within the British institutional set-up, the ombudsman system is a way to make bureaucrats more accountable to the public. Although this system offers a means through which individual grievance can be redressed, ombudsmen rarely operate with the force of law, and generally lack direct means of enforcing their decisions. The UK Parliamentary Commissioner for Administration is particularly ineffective, since complaints cannot be made directly by the public, but only on referral from a Member of Parliament, and because there is widespread public ignorance about the office and its function. (Heywood,1997:354)

Finally, a strategic approach to public participation means promoting a change dynamic within the authority. Therefore, the use of *green teams* in British local authorities needs to be further explored as a move towards culture change within institutions. The planning department of a UK county council (the Kent County Council is regarded as a reference par excellence, with a budget of £ 1.5 billion, 17 departments and 45,000 employees) is setting up a voluntary, inter-departmental management team, consisting of change agents from differing positions of responsibility within each department. Practice can be developed through identification and support of champions in spreading ownership. Through an external training intervention, the green team takes part in environmental training as a first step towards 'greening' the organisation and changing the business culture. Basic concepts of Environmental Impact Assessment and environmental management are introduced and each participant is provided with an EIA questionnaire to enable them to carry out a preliminary appraisal within their department. Furthermore, change process tools and solutions are provided to enable individuals to move from a state of intent to one of implementation in each department. (Beard and Rees,2000:28-32)

Basically, the green team has the huge task to change behaviour and integrate environmental management into the mainstream of professional managers,

administrators, planners, social workers, educationalists, civil engineers, trading standards officers and direct service providers, by passing environmental issues up, down and across the organisational structure. The real success story of green team networking, according to Beard and Rees (2000:35), has come through their action to promote better use of local authority resources, resulting in notable savings and resource efficiency, and attaining greater environmental excellence.

5.5. The Public.

5.5.1. The Nature of the British Public.

The starting point for understanding the nature of the British public has to be the –often harsh and substantial – gap between the public’s perspective of participation and that of officers who make up the ‘officialdom’ of government institutions. Both groups can be cynical about participation but even in that case, there is a difference between who is blamed for the failures of participation. (Department of the Environment, Transport and the Regions, 1998, <http://www.local-regions.detr.gov.uk/epplg/6.htm>)

Since the whole concept of Environmental Impact Assessment takes place on a micro-level within a rather small project-area, it appears to be valuable to have a closer look at participation at community level. A survey by the Department of the Environment, Transport and the Regions in the early 1990s confirmed that in so far as people do participate in either political activity or voluntary service, it is largely at the local level. Yet, panels of ordinary citizens demonstrated :

- negative views of the local government including its services, officers and members;
- a lack of awareness about the opportunities for participation that were available;

- a feeling that it would be pointless because the authorities would not do anything; and
- a strong sense among many that public participation was for others – the educated middle-class and middle aged.

(Department of the Environment, Transport and the Regions,1998,<http://www.local-regions.detr.gov.uk/epplg/6.htm>)

Apparently, these substantial barriers can only be overcome if the issue under discussion matters to members of the public, or if they feel their interests are threatened, or if there is something they can gain. Moreover, British people recognised they were often happy to let natural joiners and community leaders make the running for them. The starting point for citizens seems to be : ‘Is the time and effort required to participate going to bring on adequate benefit ?!’ (Department of the Environment,Transport and the Regions,1998,<http://www.local-regions.detr.gov.uk/epplg/6.htm>). This public perception with respect to participation reflects the *instrumental* participation rationale in Campbell and Marshall’s rationales framework (see section 3.4.).

Leach and Wingfield (1999:55-56) argue that a tension can be identified between the desire that public participation should be balanced and representative, and the reality that it is often unbalanced and unrepresentative. Secondly, there is a low level of interest in public participation initiatives in the UK. Moreover, patterns of social exclusion are invariably reproduced in British case studies; young people and ethnic minority groups are particularly hard to reach. Such groups and others often have had negative experiences with authorities, and feel that officers do not take them seriously, which reinforces their predisposition that public participation is unlikely to be worthwhile.

One particularly effective route to the generation of apathy is the raising of expectations followed by an inability or lack of preparedness to meet them. Meanwhile, more articulate and better-off social groups are well organised and well equipped to take advantage of public participation initiatives, especially when their own interests are at stake. Leach and Wingfield (1999:56) conclude that in many areas, there is a large amount of groundwork to be done before the desired level playing-field of participation can be delivered.

Having determined *social learning* as one of the main objectives of effective public participation in Environmental Impact Assessment, it is relevant to outline the official viewpoint in the UK, which explicitly states that :

‘Public participation can contribute more broadly to solving problems in local communities by :

- increasing the resolution of issues and problems by local people;
- building social capital – networks, trust and capacity – so that co-operation and co-ordination can in general be advanced; and
- consulting and involving people who can build responsible citizenship, so that if people are consulted about a development in their locality, there may well be a greater sense of responsibility towards it’.

(Department of the Environment, Transport and the Regions,1998,<http://www.local-regions.detr.gov.uk/epplg/10.htm>)

Finally, Shiner (1995:250-251) has identified opportunities for community groups in the UK to influence the Environmental Impact Assessment process, as shown in his ‘Good Practice’ checklist :

- Get to know the pieces of land, open space, countryside or potential developments which the community wants to protect or regulate and learn why.
- Co-ordinate a district-wide register of areas of land and note which individuals/groups have registered an interest or potential objection.
- Ensure easy access to advisers when needed (e.g. the Environmental Law Foundation, law centres, Earth Rights, Friends of the Earth, Greenpeace, Environmental Law Alliance Worldwide).
- Obtain a copy of the draft or adopted development plan and check the general policies on environmental issues, and the specific location of sites for particular land-uses.
- Ensure that the Local Planning Authority (LPA)’s general policies on environmental issues are adequate and make any representations as necessary.

- Access in the LPA's library (or that of pressure groups such as the Council for the Protection of Rural England) any other LPA development plans to obtain examples of the best practices on various policies.
- Ensure that the LPA has included in its Environmental Impact Assessment the environmental concerns of the community.
- Influence the drawing up at an early stage of a site specific development brief to ensure that matters which should be regulated are subject to conditions or an obligation.
- Obtain from LPA assurances that the community will be consulted in respect of applications for planning permission for certain projects and all those requiring an EIA, so that the community has a legitimate expectation of consultation.
- Arrange for regular and systematic scans of newspaper advertisements for planning applications, and ensure that the community is ready to make representations in writing as required, following advertisements by the applicant in a local newspaper.
- Be prepared to show how the community will be prejudiced by any failure to carry out an Environmental Impact Assessment.
- Give evidence to the LPA as to the likely effects of the project for the purpose of having the community's concerns and views reflected in the LPA's own Environmental Impact Assessment of the proposal.
- Make representations to the LPA, if appropriate, as to whether the developer is to be asked to provide further information after submission of an Environmental Statement.
- Obtain a copy of the LPA's Code of Practice on publicity for planning applications. (If one does not exist, suggest that it be prepared.)

5.5.2. Public Participation Techniques in the United Kingdom.

Of the large variety of approaches used to gain public input into environmental decision making, the researcher has selected the six most common public participation techniques applied in the UK, adopted from Rowe and Frewer's (2000:3-27) analysis of public participation methods, namely : public hearings/inquiries; public opinion surveys; consensus conferences; citizen's panels; citizen/public advisory committees and focus groups. Table 1 first shows the nature of the participants, time scale and characteristics of each public participation method, after which Table 2 assesses these techniques according to the following evaluation criteria : representativeness of the participants; independence of true participants; early involvement; influence on the final policy; transparency of the process to the public; resource accessibility; task definition; structured decision making and cost-effectiveness.

Table 1 : The most formalised public participation techniques in the UK.

(Adapted from : Rowe and Frewer,2000:3-27)

PUBLIC PARTICIPATION TECHNIQUE	NATURE OF PARTICIPANTS	TIME SCALE / DURATION	CHARACTERISTICS / MECHANISMS
Public Hearings / Inquiries	Interested citizens, limited in number by size of venue. True participants are experts and politicians, making presentations.	May last many weeks/months, even years. Usually held during weekdays/working hours.	Entails presentation by agencies regarding plans in open forums. Public may voice opinions but have no direct impact on recommendation.
Public Opinion Survey / Polls	Large sample (e.g. 100s to 1,000s), usually representative of the population segment of interest.	Single event, usually lasting no more than several minutes.	Often enacted through written questionnaire or telephone survey. May involve variety of questions. Used for information gathering.
Consensus Conference	Generally, 10 to 16 members of public (with no knowledge on topic), selected by steering committee as 'representative' of the general public.	Preparatory demonstrations and lectures (etc.) to inform panellists about topic, then three-day conference.	Lay panel with independent facilitator. Questions for expert witnesses are chosen by stakeholder panel. Meetings open to wider public. Conclusions on key questions made via report or press conference.
Citizens' Panel	Generally 10 to 12 members of public, selected by stakeholder panel to be roughly representative of the local population.	Not precise, but generally involve meetings over a few days (eg. 4 to 10).	Lay panel with independent facilitator. Questions for expert witnesses are chosen by stakeholder panel. Meetings not generally open to wider public. Conclusions on key questions made via report or press conference.
Citizen / Public Advisory Committee.	Small group selected by sponsor to represent views of various groups or communities (may not comprise members of true public).	Takes place over an extended period of time.	Group convened by sponsor to examine some significant issue. Interaction with industry representatives.
Focus Groups	Small group of five to 12, selected to be representative of the public, several groups may be used for one project (comprising of members of subgroups).	Single meeting, usually up to two hours.	Free discussion on general topic with video/tape recording and little input/direction from facilitator. Used to assess opinions/attitudes.

Table 2 : Assessment of the most Formalised Public Participation Techniques in the UK, according to a Variety of Evaluation Criteria.

(Adapted from : Rowe and Frewer,2000:3-27)

PARTICIPATION TECHNIQUES	PUBLIC HEARINGS/ ENQUIRES	PUBLIC OPINION SURVEY	CONSENSUS CONFERENCE	CITIZENS PANEL	CITIZEN ADVISORY COMMITTEE	FOCUS GROUPS
EVALUATION CRITERIA						
REPRESENTATIVENESS OF PARTICIPANTS	Low	Generally High	Moderate (limited by small sample)	Moderate (limited by small sample)	Moderate to Low	Moderate (limited by small sample)
INDEPENDENCE OF TRUE PARTICIPANTS	Generally Low	High	High	High	Moderate (often relation to sponsor)	High
EARLY INVOLVEMENT	Variable	Potentially High	Potentially High	Potentially High	Variable, but may be high	Potentially High
INFLUENCE ON FINAL POLICY	Moderate	Indirect and difficult to determine	Variable but not guaranteed	Variable but not guaranteed	Variable but not guaranteed	Liable to be indirect
TRANSPARENCY OF PROCESS TO PUBLIC	Moderate	Moderate	High	Moderate	Variable but often low	Low
RESOURCE ACCESSIBILITY	Low - moderate	Low	High	High	Variable	Low
TASK DEFINITION	Generally High	Low	Generally High	Generally High	Variable, but may be high	Variable, but may be high
STRUCTURED DECISION MAKING	Low	Low	Moderate (influence of facilitator)	Potentially High	Moderate (influence of facilitator)	Low
COST-EFFECTIVENESS	Low	Potentially High	Moderate to High	Moderate to High	Variable	Potentially High

Besides the six public participation methods represented in the two tables, an important seventh participation technique must be added; the *interactive website*. It seems that local authorities in the UK have been relatively quick to take up the opportunities afforded by new communication technologies. By 1997, about a quarter of all authorities in the United Kingdom had interactive websites and a third of them

planned to offer their residents that facility by the end of 1998. (Department of the Environment, Transport and the Regions,1998,<http://www.local-regions.detr.gov.uk/eplg/3.htm>) Probably, three years down the line, the number of authorities using interactive websites will have increased even more significantly, considering the ever evolving and rapidly changing Information Technology.

A recent survey by National Opinion Polls estimated that seven million people in the UK (total population: 59,1 million) have access to Internet. In the next 10 years, it is reasonable to assume that the WWW will become as widely used as television and mobile phones. Local libraries and community centres are starting to provide more access points, hopefully increasing participation in local decision making processes. The development of Geographical Information Systems (GIS) and web-based Spatial Decision Support Systems (SDSS) further gives the general public access to many data layers. (Carver, Evans, Kingston and Turton,2000:157)

Still, the possibility of creating an information underclass is an issue, which cannot be ignored. Internet will remain an inaccessible medium to certain groups of people like lower income groups and older people. In fact, the ideal of a cyber-democracy can be hindered by computer illiteracy. (Carver et al,2000:158)

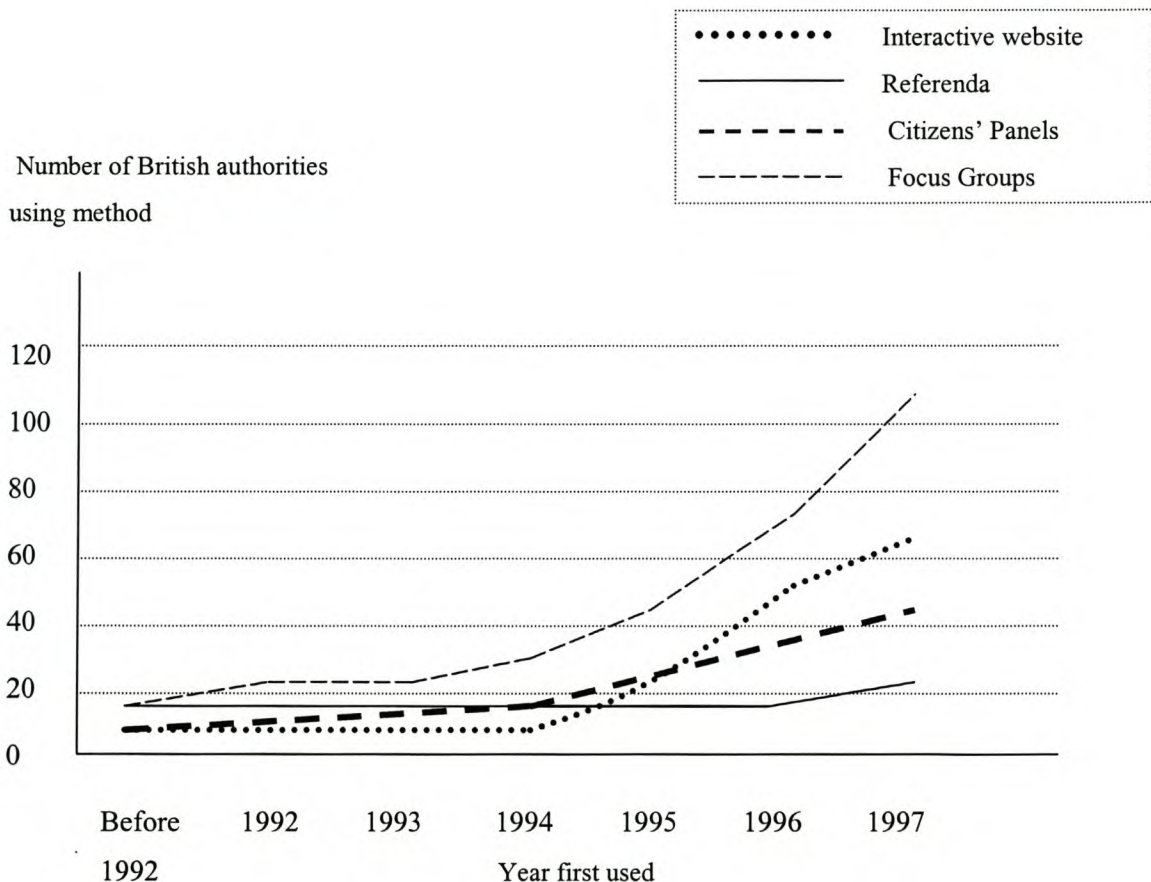
The 'UK Online Citizen-Space' is quite a remarkable attempt by the UK government to enhance public participation. It states : 'Get more involved in the democratic process. You can take part in government consultations, find your elected representatives and get information on elections, or find out how to vote and how to make complaints about public services. Contribute to government policy-making through official consultations, and discuss your views with other users'. (UKOnline,2001, <http://www.ukonline.gov.uk/online/ukonline/home>)

Another example is the website of the environmental British NGO 'Friends of the Earth' (FOE). It allows users to access, via 'point and click' maps, information about for instance chemical emissions in specific localities. Interest in the data has increased enormously; the FOE-website had 50,000 visitors in 18 months. By making information available in a relevant and meaningful form, 'not only the public's right to *know*, but the public's right to *understand*' are addressed. (Brady,1998a:174)

Even Article 5.3. of the Aarhus Convention requires Parties explicitly to ensure that environmental information progressively becomes available through

publicly accessible electronic databases. Such information should include State of the Environment Reports, environmental legislation, and, 'as appropriate', policies, plans, programmes and environmental agreements. (Brady,1998b:71)

Leach and Wingfield (1999:51) have examined recent trends in public participation methods in the UK, as shown in Figure 8 :



A key finding emerges from the accelerated curve, seen in Figure 8, especially since 1994. It emphasises the extent and diversity of innovation in public participation over the last few years.

Still, Rowe and Frewer (2000:7) argue that there is little comprehensive or systematic consideration of 'good' outcomes of public participation techniques in the literature, and hence whether any particular application of a particular method may be considered successfully, usually remains undetermined. Public participation methods such as referenda and public hearings often seem to be employed, simply in

recognition of a need to involve the public in some way, assuming that public participation is an end in itself, rather than a means to an end.

Of all the public participation techniques reviewed, *public inquiry* needs further attention for its crucial role in enhancing public involvement by the British public. The public inquiry comes at the very end of the development control process and has always provided an opportunity for planning applications to be scrutinised in far more detail than is the case with applications determined by planning authorities. The adversarial nature of the proceedings means that expert witnesses and their proofs are cross-examined and tested by the 'opposition's' advocates and the Regional Inspector. (Weston,1997:122)

In the UK, many major developments are subject to an inquiry in public, although this is not obligatory. Public inquiries have a quasi-judicial structure with the right to legal representation. (Wathern,1988:200)

Apparently, the introduction of Environmental Impact Assessment in the UK has had little marked effect for the public inquiry process. By the time a project becomes the subject of a public inquiry, the sides are drawn and the hearing becomes a focus for adversarial debate between opposing, expensive, expert-directed and spurred on by advocates, schooled in the art of cajoling witnesses into submission and contradiction. Such debates are seldom rational or in any other way related to the systematic, iterative and co-operative characteristics of good practice EIA. By the time the public inquiry comes around and all the investment has been made in expert witnesses and smooth talking barristers, it is too late for rational co-operation. (Weston,1997:139)

5.5.3. Environmental Dispute Resolution in the UK.

Although the developer has rights of appeal against the LPA's screening decisions and against its decision on the planning application, no similar right of appeal by statutory consultees or by the public exists at these or any other stages in the Environmental Impact Assessment process. (Wood,1995:234)

The UK appeal system only operates when planning applications are refused; there is no third party appeal against a planning permission unless it is a legal challenge through the courts. (Weston,1997:120) In other words, a third party has no statutory right to administrative review of an environmental decision in the UK, unless this decision is challenged by way of judicial review in the High Court. (Führ, Gebers, Ormond and Roller,1995:94)

Former judgments in British High Courts indicate that an applicant with a good case is likely to be deemed to have *locus standi* (standing, or sufficient interest to approach the courts) and that pressure groups should not be precluded from access to the courts by 'outdated technical rules'. However, recent judicial authority suggests that a restrictive construction of 'sufficient interest' is employed in relation to environmental law enforcement. Courts appear to be more ready to attribute sufficient interest to those groups or organisations which have a proximate and enduring concern either with the subject matter of the litigation or with those persons who would have standing. (Führ et al,1995:94)

Yet, two famous court cases in Britain contradict this restrictive approach, whereby courts were able to interpret 'sufficient interest' flexibly. The 1994 Greenpeace case, in which Greenpeace was granted standing, established that it was appropriate to take into account the nature of the interest, the extent of the applicant's interest in the issue raised, and the remedy and relief sought. The fact that there might not otherwise have been an effective means of bringing concerns before the court and the fact that the NGO had been involved in the consultation process, were also considered relevant. In the 1995 Pergau Dam case, there was an even more liberal approach to standing, including the merits of the challenge, the importance of the issues raised and the likely absence of another challenge. (IMPEL Network,2000:125)

Another interesting issue on *locus standi*, is that individuals, in order to have standing, must show a greater interest than other members of the general public, or must suffer particular damage, different from and greater than that suffered by the general public. (Führ et al,1995:94)

It is not only primary legislation which effects the way British citizens can resolve environmental disputes; but also European legal systems which can include such provisions. The Aarhus Convention for instance, entails provisions with regard

to its third 'pillar' of Access to Justice for citizens and NGOs in the field of the environment within the European Union. Article 9 provides for appeals in relation to both access to information and public participation in environmental decision making, though only where provided for under national law. (Brady,1998b:72)

As a matter of fact, the Convention leaves the national authorities a great deal of discretionary powers to interpret these provisions, in a way that is consistent with their own national legal system. Consequently, the UK as member state, may interpret the elements of section 9 of the Aarhus Convention differently. (IMPEL Network,2000:4) Since the Convention is expected to be implemented in the course of 2001, it remains to be seen how the United Kingdom is going to interpret the Aarhus provisions into their legal system.

Apparently, the financial risk is an important obstacle for citizens and NGOs to start proceedings. This general position is modified where a plaintiff may benefit from state-funded legal aid, but this is only available to a small, financially disadvantaged part of the community in Britain. It would therefore, be the case that the majority of civil actions in environmental cases are brought by corporate plaintiffs or legally aided individuals. A recent development however, enhances the readiness of individuals to bring civil actions, as lawyers have been more willing to work on the basis of 'no win no fee' arrangements, which may ultimately impact upon civil litigation in the environmental context. (IMPEL Network,2000:129)

5.6. Formal and Informal Public Participation Opportunities in the Environmental Impact Assessment Process in the UK.

Formal requirements for public participation are detailed in the UK Regulations, all referring to the procedures once an Environmental Impact Statement has been submitted with a planning application, i.e. after an Environmental Impact Assessment has been conducted. On receipt of the EIS and planning application, the Local Planning Authority must contact all statutory consultees, who have at least 14 days to comment on the EIS in writing to the LPA. The LPA will place the EIS on the planning register and send a copy to the Secretary of State. It is **at this stage** that

public participation is formally required. The developer must publicise details of the planning application, and advise the public on where a copy of the EIS can be inspected or obtained, through bill-posting and publishing a notice in the local newspaper. A period of 21 days is allowed for written representation to be made to the LPA. The LPA receives comments from the public and the statutory consultees, and must consider all representations before reaching a decision on whether to grant or refuse planning permission for the project. A decision must be made within 16 weeks of receiving the application and the outcome of the application must be published, along with details of how the decision was reached. (Clark,1994:297)

Informal opportunities for public participation exists in most EIA systems, as in the United Kingdom. Indeed, there is much evidence to suggest that where informal participation occurs, the quality of the Environmental Impact Statement is often better and all parties feel that their views have been considered.

Based on the five major steps in the Environmental Impact Assessment Process – screening, scoping, preparation of an Environmental Impact Statement, report review and decision making and lastly follow-up – formal and informal opportunities for public participation in the UK will be analysed in more detail.

5.6.1. The Screening Stage.

Where there is any doubt about the need for Environmental Impact Assessment at the screening stage, the developer is advised to consult the Local Planning Authority (LPA) to obtain an informal view or a formal opinion. The LPA may, in turn, refer to the statutory consultees for advice. If the LPA determines that an EIA is required, there is a provision for the developer to appeal to the Secretary of State for the Environment against these screening decision. There is, however, no formal third party right of appeal against screening decisions. Statutory consultees are sometimes involved in the screening process, but the public does not participate. (Wood,1995:122)

Whilst the government Regulations make no provision for public participation at this early stage of the EIA project cycle, the public may have informal opportunities to influence indirectly since the Local Planning Authority is an elected

body. LPAs tend to consider local feelings in their screening decisions. The public may request consultation with the LPA, be made aware of material provided by the proponent and make representations concerning the perceived need for an Environmental Impact Assessment. Yet, this rarely occurs in the UK. (Clark,1994:298)

Weston (2000:195-196) examined the screening process in practice and provides details of the LPA's officers' experience with screening. The LPA officers were asked to list what they consider to be the most important factors in screening (Schedule II) projects. The response to this question is summarised in Table 3 :

Table 3 : The LPA's most important screening criteria.

Screening Criteria	% of 'hits'
Nature of the project/processes and likely emissions	20
Proximity to a sensitive environmental receptor	19
Likely traffic or access impacts	14
Size or scale of the project	12
Physical impacts (noise, odour, drainage)	12
Likely public/political concern	8
Socio-economic impacts (retail, tourism)	8
Landscape impacts	7
	100

Of interest is the fact that public and political concern is identified as a key screening issue, even scoring marginally above landscape impacts, and yet it is not a screening threshold in the current UK system, even under the new Regulations.

5.6.2. The Scoping Stage .

There is no formal requirement for the proponent to consult the local planning authority prior to submission of the EIA Report, or to undertake any form of scoping in the United Kingdom. Nor is involving the public a legal requirement, despite the following recommendation of the Department of the Environment :

‘While developers are under no obligation to publicise their proposals before submitting a planning application, consultation with local amenity groups and with the general public can be useful in identifying key environmental issues, and may put the developer in a better position to modify the project in ways which would mitigate adverse effects and recognise local environmental concerns’. The Department further advocates for early consultation in the scoping process, as it can provide the assessor with a clear indication of what consultative bodies and the public consider to be significant. (Wood,1995:135)

To Bulleid (1997:37), it is unclear why scoping is not mandatory in the UK, like in many other countries. It would seem to be helpful in achieving the balance and objectivity the British Government seeks; it is even one of those rare procedures that appears to hold benefits for all the parties concerned ! Even for the developer, there is little to be lost and much to be gained; familiarity by the public with the proposal usually results in , if not acceptance, then at least a constructive attitude.

In a British study of a sample of 24 cases where Environmental Impact Statements were submitted, only one-third of developers or their consultants undertook discussions with the statutory consultees, other bodies or the public, prior to the submission of the EIS. Where they did occur, however, the developers found them to be of great value. (Wood,1995:136)

Barker and Wood (1999:396) argue that the importance of scoping and particularly the involvement of the public, is a determinant of EIA report quality in the UK; scoping appears to lead to improved quality of the Environmental Impact Statement.

Weston (2000:198) underpins this statement and adds that the scoping process is at heart human centred or anthropocentric. It is just because the scoping test of significance for any project relies so heavily on an understanding of ‘significance’ in political terms, that public participation is considered by proponents of EIA to be of such importance to the success of the process.

The ‘Best-Practice Guidelines for the Scoping Phase’ for EIA practitioners by Palerm (2000:598) offers guidance on informal opportunities for public participation :

- directly affected actors must be directly invited to participate;

- actors representing the interests of cognitively non-competent affected actors must be identified, with the consent of the public they are representing; and invited to participate;
- a wide notification should be made by making use of the mass media and through traditional ways (eg. posting of public notices);
- notification in the 'official gazette' is not satisfactory by itself and should include time, date and venue of meetings;
- notification should be made in sufficient time to allow actors to prepare positions;
- prior information, containing at least the project's description and its expected environmental impacts, should be sent to the directly affected actors, and made publicly available;
- the different participants must have an equal standing, having the same opportunity to put forth validity claims and challenge others;
- a methodology should be employed which seeks to reach consensus;
- independent experts could be brought in the process to help solve conflicting claims;
- minutes of the scoping phase must be kept, distributed to participants and made publicly available;
- it should be made explicit that the results of the scoping process should reflect the concerns of the affected actors, as well as the legal provisions; and
- the decision must be made publicly available.

5.6.3. The Reporting Stage.

There are no formal provisions in the UK Regulations for consultation during the preparation of the Environmental Impact Statement. In other words, the developer is not required to enter into discussions with the public, although information

concerning the development and the EIS must be made available. The developer must also ensure that a non-technical summary of the EIS is provided. (Clark,1994:298)

The British jurisdiction can therefore only rely on the diffusion of best practice and sanctions later in the Environmental Impact Assessment process as checks on the quality of the EIA reports. (Wood,1995:149)

Thompson (1997:162) conducted a study, reviewing 179 Environmental Impact Assessments in Britain and revealed that non-statutory bodies (like British Trust for Ornithology, Council for the Protection of Rural England, local wildlife trusts and other special interest groups) were often not consulted at the pre-submission stage. These interested parties should be consulted for three reasons. First, contact with these groups can save time by both focusing fieldwork attention on the right areas and saving on duplication of any previous surveys. Second, these bodies have long-standing expertise which should be utilised to permit the time saved in using their expertise to be used on another area for which existing information is not available. Third, their expertise can be employed to assess the validity of fieldwork data.

Another review of 71 Environmental Impact Statements in Britain by Russell (1999:541;544) showed that authorities reported that there has been little interest in the EIS by the public, due in part to the technical nature of the information. Therefore, the EIA report can be made more transparent by the use of commentaries describing the expected effects. The presentation of matrices with ticks and crosses illustrating impacts, can be a useful visual summary, but is not conducive to public understanding. Use of more innovative and interactive techniques to communicate with the wider range of audiences might be an appropriate step forward.

During the environmental statement stage, some informal opportunities for public participation may exist :

- *information provision* : the public may be well equipped to provide local knowledge and data for the EIA report, whether in the form of baseline data or attitude surveys. At present, this is left to the multi-disciplinary teams who undertake the EIA;
- *determining significance* : by involving the public as early as possible, issues may be identified which 'experts' might not have considered important, but

which could prove to have a degree of importance out of all proportion to the magnitude of the impact. The public can be useful in providing a novel slant or opinion on the proposed project as it will affect them. Such views have been formally taken into account in some British EIA studies;

- *identifying mitigation measures* : the public can contribute by providing local knowledge on possible measures in an attempt to lessen predicted negative impacts to a more acceptable level. (Clark,1994:299)

5.6.4. The EIS Review Stage.

At this stage in the EIA process, formal public participation is required. Members of the public have the opportunity to comment on the Environmental Impact Statement, ensuring that the competent authority is fully informed about the environmental implications of the new development and is taking these into account in reaching a decision. (Department of the Environment, Transport and the Regions,1998: <http://www.detr.gov.uk/planning/eia/assess/doc01.htm>)

These statutory requirements are fairly limited, since the public is only informed in the form of written submissions. The developer is not required to enter into discussions with the public. (Clark,1994:298) Linking this approach to Arnstein's citizen participation ladder leads to the informing rung of tokenism, allowing the have-nots to hear and to have a voice, but lacking power to insure that their views will be heeded by the powerful.

Furthermore, it has to be acknowledged that the statutory time limit of 21 days for comment on an application is woefully inadequate. Given the amount of documentation involved with an EIA report, it is unreasonable to expect experts, let alone 'lay people', to give a reasoned response to what are often complex projects. (Read,1997:81)

Read (1997:81) claims that the legislative requirements during this stage are very much a minimum requirement and other informal procedures are often engaged as part of the review process.

There is no formal consultation and participation requirement during the decision making process, though lobbying and, sometimes, the right to address LPA decision makers while the decision is being discussed, are permitted. There is, of course, a right of the public and consultees to be heard at public inquiries. (Wood,1995:233)

5.6.5. The Follow Up Stage.

Due to the absence of any measures for follow-up in the European EIA Directive, there is no requirement relating to it in any of the UK EIA Regulations. The Department of the Environment guidance on EIA procedures does not even refer to monitoring or audit. Disappointingly, recent guidance to developers on the preparation of EIA reports also does not mention monitoring or auditing proposals. (Frost,1997:143) Consequently, there exists no public right to participation in the monitoring of implemented projects. (Wood,1995:233)

Given that Environmental Impact Assessment should be thought of as an interactive ongoing process, rather than a static process to obtain an authorisation, there is now clear evidence that the public can play a key role in ongoing monitoring activities. (Clark,1994:299) However, little evidence has been found in the academic literature to develop this theme in detail.

5.6.6. Summary.

To summarise, public participation, prior to the submission of the Environmental Impact Statement is not a requirement of the UK Environmental Impact Assessment system, although frequently participation occurs informally as well as formally subsequent to submission. Practice varies substantially and there is clearly scope for consultation and participation to become more effective, especially in relation to the largely marginal role played by the general public in the EIA process. (Wood,1995:235)

In practice, much of the public participation in EIA tends to be at the low-control end of the spectrum : informing the public, seeking the public's preferences and values, and incorporating that information into the EIA. Even this can seem too much involvement for some proponents. (Morgan,1998:151)

Commenting on the UK scene, Glasson, Therivel and Chadwick (1994) in Morgan (1998:151-152) note :

'Developers do not usually favour public participation. It may upset a good relationship with the local planning authority. It carries the risk of giving the project a high profile, with attendant costs in time and money. It may not lead to a conclusive decision on a project, as diverse interest groups have different concerns and priorities; the decision may also represent the views of the most vocal interest groups, rather than of the overall public. Most developers' contact with the public comes only at the stage of planning appeals and inquiries; by this time, 'participation' has often evolved into a systematic attempt to stop the project. Thus many developers never see the positive side of public participation, because they do not give it a chance'.

5.7. Conclusion.

This chapter has examined public participation in Environmental Impact Assessment in the UK. First, the appropriate legislative framework as a legal basis for public participation was reviewed, considering both the domestic devolution agenda and the integration with the European Community. Second, the institutional set-up in the UK determines the appropriate implementation of EIA legislation. Therefore, relevant competencies and the role of the civil service were examined. The core part of this chapter reviewed the public as the cornerstone of effective public participation; what is the nature of the British public, which public participation techniques are commonly employed and how can the public resolve environmental disputes successfully? Last but not least, formal and informal public participation opportunities at the various stages of the Environmental Impact Assessment process were explored, in order to get a whole and meaningful picture of the way how the

public can participate effectively in the British environmental decision making process.

It appears that the full potential of public participation in EIA in the UK remains untapped due to restricting legislative, institutional and practitioner barriers. The UK as a member state of the European Union, is required to operate within a framework law, but is still allowed a certain amount of discretion in the realisation of the EU-Directive. This discretionary approach, often limited to minimum requirements, may hinder participatory public participation methods. Reluctance to adopt a new, proactive approach to environmental decision making comes from both the authorities and the general public. It is only once the environmental impact statement has been submitted that the local planning authority must consult. Prior to this, public participation takes place in a minority of cases. The level of public participation could be described as 'too little, too late', even on an informal level. More attention should be paid to the integration of public input at each stage of the EIA process, in particular at the scoping and monitoring stage, where public participation is currently underdeveloped or non-existent. By involving the public proactively at each stage of the process, citizens can play the role of watchdog, holding developers and officials accountable.

In conclusion, public participation in EIA in the UK is often reduced to a procedural exercise instead of a substantive process to include the public in environmental decision making. A higher profile for public participation in the British Environmental Impact Assessment system is required.

Chapter 6 : Public Participation in Environmental Impact Assessment in South Africa.

6.1. Introduction.

After having examined the role of public participation in Environmental Impact Assessment in the 'old world', attention will now be paid to effectiveness of the public participation process in South Africa, a country caught up in wider political and societal change. Greater participation by the public has emerged as an important subject of debate and is at the core of this new democratic society. This chapter is even more challenging, since the country is located at the crossroads between developed and developing countries with a mix of first and third world environmental problems and an extremely diverse citizenry.

In South Africa, there has been great interest in Environmental Impact Assessment, despite a historical lack of awareness of the need to consider environmental issues and a consequent lack of political will to implement controls, as will be explained in the first part of this chapter. Furthermore, the two pillars on which the EIA is based, will be reviewed. First, the appropriate legislative framework will indicate whether the recently promulgated EIA legislation is a secure legal basis for public participation. Second, the institutional set-up in South Africa will be highlighted, examining relevant competencies, the role of the civil service and their capacities and/or impediments to implement the EIA legislation. The core part of this chapter reviews the public as cornerstone of effective public participation: what is the nature of the public, which public participation techniques are commonly employed and how can the public resolve environmental disputes successfully? Finally, formal and informal public participation at the various stages of the EIA process will be explored, in order to get a meaningful picture of the way how the public can participate effectively in the South African environmental decision making process.

6.2. Background.

The history of South Africa has been one in which the vast mass of the population has been excluded from public participation in the political decision making mechanisms of society. Lacking a tradition of democracy and public involvement, especially at grassroots level, the consequence has been that broad-based public participation in environmental decision making has been minimal. (Khan,1998:73)

Moreover, the system of apartheid in South Africa has encouraged the adoption of an expert/elitist approach toward planning and decision making. Proponents of this model – professional planners and engineers, decision makers and politicians – believed that those who were best qualified and most knowledgeable were responsible for making societal decisions, whereby technical and financial considerations dominated the decision making process. (Sowman, Fuggle and Preston, 1995:54)

Before 1994, the majority of South Africans, notably blacks, were not enfranchised and therefore could not participate in the administration and governance of South Africa at the highest tiers or spheres of government. The South African governmental system prior to 1994 was characterised by a type of authoritarian-paternalism, whereby the Nationalist government decided, usually unilaterally and without prior consultation, how the majority of citizens were to be governed and administered. The new, democratically elected government however, committed itself to participatory democracy by allowing for the maximum degree of citizen participation in the governance and administration of the country. Indeed, under the post-1994 dispensation, South African citizens are urged to participate in the affairs of government and administration in order to add legitimacy and value to the policy-making process and to make the whole governmental system accessible, even to the lowliest of inhabitants. (Hilliard and Kemp,1999:41)

Democratic involvement and participation in decision making and executive actions may well result in an improvement of the legitimacy of environmental policies and actions, despite the fact that environmental concerns do probably not feature as a priority for a majority of South Africans. (Schwella and Müller,1992:80)

According to Lawrence (1999:62), the philosophy of sustainable development never took root under apartheid. By contrast, the present government is attempting a genuine paradigm shift in making sustainable development its touchstone.

In addition to this, South Africa is also experiencing the global rise of civil society. Social movements, including environmental movements, emerge in non-institutionalised discourses designed to challenge and change society. (Scott, Oelofse and Weaver,2000:8)

However, Hamman (1999:36) warns for too much reliance on civil society and claims that the term needs to be problematised in the African context, since it is an import from European intellectual history, relying on a middle class. In South Africa, the existence of two publics is clearly problematic. The 'civic public' is dominated by the state and its apparati (bureaucratic, military, legislative etc.) which developed from the apartheid administration and is consequently far removed from the lives of most ordinary people and often suffers from legitimisation crises. The 'primordial public' evolved more or less as an alternative to the state, comprising ethnic and religious organisations, and evoked a strong sense of ownership amongst ordinary citizens. This might be one way of interpreting the very different relationships that people in, say, an African township and those in a white suburb have to the State, NGOs or academic institutions.

There has been a great interest in Environmental Impact Assessment in South Africa, despite a historical lack of awareness of the need to consider environmental issues and a consequent lack of political will to implement controls. (Wood,1999:52)

During the 1970s, the debate on the necessity and appropriateness of Environmental Impact Assessment as a tool for promoting environmental conservation was raised in several South African forums. A significant event in the development of EIA in South Africa was a gathering of organisations, government departments, academics, professionals and members of the general public concerned with the question of environmental evaluation at a symposium on 'Shaping our Environment' in 1979. Further evidence of the government's recognition of the value of EIA was given in the 1980 'White Paper on a National Policy Regarding Environmental Conservation', forming the basis for the Environmental Conservation Act 100, promulgated in 1982. The development of the EIA philosophy in South

Africa culminated in the publication of the important document entitled 'Integrated Environmental Management' (IEM) in 1989. This publication coincided with the promulgation of the new Environmental Conservation Act 73 of 1989 that replaced Act 100 of 1982. (Sowman, Fuggle and Preston, 1995:49-51)

The term 'IEM' was chosen to indicate an approach that integrates environmental considerations into all stages of the planning and development process and requires post-impact assessment monitoring and management. It was felt that the term 'Environmental Impact Assessment' was inappropriate as the EIA process was perceived to be too limited in scope, reactive, anti-development, too separate from the planning process and often the cause of costly delays. (Sowman, Fuggle and Preston, 1995:51) In other words, IEM emphasises the integrations of environmental factors into planning and implementation of development. The IEM Guidelines have been widely accepted by government, industry and civil society. (Hill, 1998: <http://www.art.man.ac.uk/eia/N116saf.htm>)

Given South Africa's history of marginalising the majority of the population from the decision making mechanisms of society, the main principles underpinning Integrated Environmental Management, are of particular value :

- open and participatory planning;
- consultation of interested and affected parties;
- informed decision making;
- accountability; and
- a democratic regard for individual rights and obligations. (Khan, 1998:73)

6.3. Appropriate Legislative Framework for Public Participation in Environmental Impact Assessment in South Africa.

The IEM guidelines formed the basis of several hundred voluntary EIAs in South Africa, in which the linkage between EIA and the on-going environmental management of the implemented project (through environmental management plans,

environmental contracts, monitoring and auditing) was a key characteristic. (Wood,1999:52)

These voluntary EIAs were of varying standards and were lodged with a wide range of national, provincial and nature conservation authorities, none of which had the power to prevent a development if the recommendation of the EIA was that the development should not proceed. (Winstanley,1998:387)

In response to continuing pressure to implement the dormant powers to give Environmental Impact Assessment the force of law in South Africa, EIA Regulations were promulgated and came into effect between 1 September 1997 and 1 April 1998. In the event, they were followed by the National Environmental Management Act 1998 (NEMA), which provides for the IEM philosophy to be integrated into the undertaking of Environmental Impact Assessments. (Wood,1999:53)

NEMA is regarded as a landmark statute in environmental affairs in South Africa. Not only was pioneering work done in terms of the democratic and negotiated policy and legislative processes that preceded it, but it is also the first umbrella national legislation which endeavours to establish an integrated environmental management framework which, in time, will transform and co-ordinate most of the currently diverse and fragmented sectors of the environment. As the cornerstone of environmental management in South Africa, the Act places the environment squarely within the process of constitutional transformation and on par with internationally recognised environmental principles and practices. (Bray,1999:1)

NEMA furthermore includes one of the most extensive public participation processes yet seen in South Africa, despite the impression created that public participation in the Act's enactment process was a necessary obstacle that had to be encountered on the way to the winning tape, rather than an integral component of the entire process. (Kidd,1999:21)

To summarise, Environmental Impact Assessments are specifically required by :

- Section 22 of the Environment Conservation Act of 1989. Under certain circumstances 'reports concerning the impact of the proposed activity (...) on the environment' must be prepared. The general environmental policy made

it mandatory to do a planned analysis before embarking on any large-scale or high-impact development project;

- Section 39(5) of the Minerals Act of 1991. The Director General of the Department of Minerals and Energy may require that ‘...an Environmental Impact Assessment be carried out’;
- Section 24 of NEMA, Act 107 of 1998 : ‘...the potential impact on : (a) the environment; (b) socio-economic conditions; and (c) the cultural heritage, of activities that require authorisation or permission by law and which may significantly affect the environment, must be considered, investigated and assessed prior to their implementation...’. (Barnard,1999:180)

Appendix V shows an overview of Environmental Policies, relevant to Environmental Impact Assessment in South Africa since 1982. (Weaver, Hounscome and Ramasar,1999:3-4)

According to environmental attorney Winstanley (1998:388), the introduction of mandatory EIAs is undoubtedly a positive step for South African environmental law. Moreover, public participation was made compulsory both in support of the broad principles of the general environmental policy, evaluating projects holistically, and as part of the EIA Regulations of 1997. (Barnard,1999:111)

Public participation in the EIA process is addressed directly in the Notice 1183 of the 1997 EIA Regulations as follows :

‘The interested parties are responsible to :

- provide input and comments during various stages of the EIA process. It is suggested that inputs and comments of the interested parties be obtained during the following stages : the scoping stage, assessing and mitigating impacts, review of the environmental impact report, and implementation and monitoring;
- provide their inputs and comments within the specific time-frames as specified by the applicant/consultant and relevant authority’. (Department of Environmental Affairs and Tourism,1997:17)

Furthermore, there must be a description of the public participation process as an appendix to the Environmental Impact Report, including a list of interested parties

and their comments. If public participation is not complied with by the applicant and not immediately attended to, after having been made aware of it by the relevant authority, the application is regarded as having been withdrawn. (de Villiers Truter,1998:28)

6.4. Institutional Framework in South Africa.

The ending of apartheid and the transition to democracy in South Africa brought with it fundamental changes to the form and function of the state. In particular, it brought a restructuring of intergovernmental relations and a redefinition of the responsibilities of the different tiers of government, delineated in the Constitution of 1996. (Tapscott,2000:119) All government action is governed by the Constitution, which establishes the competence of different governmental levels to legislate and also sets minimum environmental rights which must be respected. (Peart and Wilson,1998:243)

Several primary role-players are involved in managing South Africa's environment. The foremost is the Department of Environmental Affairs and Tourism, which, according to Environment Conservation Act 1989, aims to ensure the effective protection and sustainable utilisation of the environment for the benefit of everyone in South Africa. Provincial administrations are responsible for nature conservation, land use planning, waste disposal, sea-shore management and noise control within their own provincial service areas. At local government level, the various municipalities and city councils have to execute legislation with regard to mainly town planning, air pollution, noise control, waste and water management, and preservation of open spaces. (Nealer,1998:72-73)

The EIA Regulations of 1997 (Department of Environmental Affairs and Tourism,1997:17;19) clearly state that the provincial environmental authorities have been designated as the relevant authority and will receive all applications for consideration. Also, provision has been made in the Regulations for the relevant provincial authorities to identify local authorities that could be designated by the

Minister of Environmental Affairs and Tourism to act as competent authorities, since the provinces are in the best position to decide if a local authority will be competent.

Winstanley (1998:391) has identified difficulties, associated with the implementation of the EIA Regulations. The Act allows the Minister of Environmental Affairs and Tourism to designate competent authorities who may grant permission to carry out identified activities. They are, generally speaking, the provincial environmental departments or the provincial nature conservation authorities, who are obliged to consider applications for activities proposed within their jurisdiction. However, the decentralisation does have the disadvantage that the Regulations are not uniformly and consistently applied. One way of ensuring certainty in the face of this lack of uniformity is to publish departmental policy on the administration of the Regulations.

Another major source of practical concern is the lack of adequate personnel who are able to consider applications in most provinces. If larger percentages of provincial budgets are not allocated to the implementation of mandatory EIAs, it will be extremely difficult for competent authorities to fulfil their obligations in terms of the mandate given to them by the Minister. (Winstanley,1998:394)

Memoranda of Understanding between the Department of Environmental Affairs and Tourism, the nine provinces and the various central government departments are being drawn up to try to reduce misunderstandings, to attempt to integrate the separate discretionary EIA and planning decision making procedures, and to ensure uniformity of EIA practice. (Wood,1999:53)

If the South African framework of environmental management is implemented vigorously, it will test both the spirit as well as the mechanisms of co-operative governance. Lawrence (1999:63) articulates a few legitimate concerns in this regard. Are the practical requirements in place to ensure that co-operative governance can occur regularly and consistently in the arena of sustainable development ? Can South Africa fully carry out Environmental Impact Assessments using the same mechanisms of intergovernmental practice ? Does the environmental management framework extend explicitly to local government ?

Intergovernmental cooperation and coordination, together with extra-governmental relations with the citizenry and NGOs are essential for an efficient,

effective and economical bureaucracy. If good governance does not occur, misgovernance could become commonplace. The public should therefore be ever watchful, questioning undue delays, pedantic procedures and unnecessary officiousness. Interaction, networking and to-and-fro exchange of information to maintain public service efficiency should eventually ensure that civil servants first and foremost serve the general welfare of the population. (Hilliard and Kemp,1999:55)

Nealer (1998:78) has identified a general lack of means and experience at institutional and organisational levels of government as well as an uninformed public regarding efficient environmental management as some of the reasons of South Africa's deteriorating environment.

The administrative capacity of the provinces for example, is presently extremely variable. Whilst some provinces (Gauteng and the Western Cape) are performing relatively well, others (such as the Eastern Cape, the Northern Province and Mpumalanga, which absorbed the former homelands) are struggling to deliver even basic services. (Tapscott,2000:122) Indirectly, this national imbalance can cause differing local development priorities, sometimes at the expense of environmental issues.

Mokgoro (2000:141) claims that the provincial sphere of government, critical in delivering national policies like EIA Regulations, is afflicted by a number of constraining factors, such as :

- a bloated public service;
- distorted expenditure patterns which tend to crowd out investment in development;
- serious capacity problems and low productivity; and
- huge inherited and slowly transforming bureaucracies.

Hilliard and Kemp (1999:63) identify reasons and remedies for a lack of openness and transparency among South African civil servants :

Reasons for a lack of openness and transparency :	Remedies for a lack of openness and transparency :
<ul style="list-style-type: none"> - public functionaries forming cabals and cliques; - sinister state activities veiled in secrecy and intrigue; - hidden, double and private agendas of public functionaries; - absence of protocol and proper procedures by citizens and public functionaries; - moral ambiguity and hypocrisy by public functionaries; - vested interests, egoism and empire-building by public functionaries; - vilification of opponents and critics by office-bearers, prominent persons and dignitaries. 	<ul style="list-style-type: none"> - regular mass meetings to keep all role-players and stakeholders informed; - adequate dissemination of information to all interested parties through the mass media; - educating the public about interest articulation and aggregation; - allocating sufficient time, on a non-partisan basis, for media coverage of political issues; - initiating adult-learning programmes to improve the knowledge of the uninitiated, and to bring them on a par with the politically sophisticated (elite) section of society; - involving all stakeholders in the policy formulation through keeping the legislatures accessible to the public.

Undoubtedly, openness and transparency could eventually become worn-out clichés in the new South Africa and may confine participatory democracy only to the elite few, but, the new government has *bona fide* intentions to keep the public informed. Still, to achieve this vigilance, one needs a wide-awake public that is not easily intimidated and is prepared to speak out when a public functionary steps out of line. (Hilliard and Kemp, 1999:64)

According to Kakonge (1998:303), the horizontal linkages between ministries responsible for environmental issues require considerable strengthening in most African countries, as do the vertical linkages between disciplines in the environmental related ministries and local authorities. Apportioning responsibilities among different levels of government, articulating acceptable laws and regulations, and encouraging a consultative process of planning among concerned stakeholders could resolve many environmental conflicts, like competition for resources or inadequate enforcement framework.

One cannot leave a discussion of transparency and accountability in the African institutional context without mentioning the problems of corruption and difficulties of enforcement, affecting environmental issues. In Southern Africa, environmental conflict often arises not because there is a lack of broad policy

directives or existing legal mechanisms, but rather because of commonly available avenues for avoiding or circumscribing existing policies or laws. In short, corruption and bribery can subvert even the best conceived environmental initiatives and laws. (Kakonge,1998:300-301)

Bribes allow persons or institutions (both private and public) to lower the cost of doing business by overriding legal norms, by reducing government-imposed environmental legislations that may be seen as restrictive to the firms' financial viability or profitability. If the principle of 'the polluter pays' can be negated by bribery, then certain firms or agencies may be more willing to use such an approach. (Kakonge,1998:301)

6.5. The Public.

6.5.1. The Nature of the South African Public.

Many South African communities have suffered from decades of dislocation, dispossession and confinement to a servile status under successive colonial and apartheid policies which have marginalised their local knowledge and status. In the post-apartheid era, in addition to acknowledging and rectifying the wrongs of the past, the knowledge and values possessed by such communities have to be recognised and utilised in order to achieve environmentally and socially sustainable development in the future. (Motteux, Nel, Rowntree and Binns,1999:228)

Hence, the South African public, particularly disadvantaged communities, have insisted on their right to be consulted on decisions affecting their living circumstances. Service and community organisations such as civic associations in rural and urban areas have helped to transform decision making processes by demanding a say in planning decisions. (Sowman and Gawith,1994:549) They should act as an environmental watchdog, forcing the authorities to take cognisance of the environmental issues in decision making. Moreover, public action promoting environmental management and conservation is and will become more important as

the State curtails staffing levels in the civil service, resulting in fewer staff monitoring and enforcing environmental standards. (de Villiers Truter,1998:13)

According to Laburn-Pearl (1998:177), one of the biggest challenges for South African planners, working in a context of limited resources, will be to find the appropriate level of participation for each project they undertake. This means overcoming the traditional exclusion of the poorest from the planning process. Apparently, social exclusion is likely to be as much a cause of poverty as one of its effects, and has even discouraged or disabled people from developing the kinds of networks they need to thrive.

Grassroots participation is sometimes more of a nuisance value than anything else. This happens because the poorest of the poor usually have few or no skills, and there is also a dearth of expertise at these levels. Furthermore, the poor do not have the financial means to quickly acquire such skills. Nonetheless, despite these constraints, information-wise openness and transparency could mean much to them, especially those who are living in the remote rural areas where the traditional tribal governmental systems are still in place. (Hilliard and Kemp,1999:55)

The following broad principles provide the context for the successful involvement of disadvantaged communities in environmental decision making :

- there is a need to be sensitive to the legacy of apartheid, as well as its continuing impact and ongoing inequitable power relations;
- there is a need to remember that communities are not homogenous, but diverse entities, with a mix of different experiences, opinions and expectations. Hence there is no single correct public participation strategy or blueprint for implementing public participation;
- these strategies should be both appropriate and responsive to local conditions; and
- sufficient time should be allowed to carry out public participation programmes, particularly those aimed at historically disadvantaged communities. (Khan,1998:74)

It is suggested that a number of factors are important in determining whether people really want to participate in planning. It seems that public participation is

usually restricted to those citizens who feel directly threatened or affected or where there is some specific interest for them in the outcome. (Brynard,1996:42) Here again, one can argue that this public perception with respect to participation reflects the *instrumental* participation rationale in Campbell and Marshall's rationales framework (see section 3.4.).

Another factor is ignorance. It seems that the average citizen, particularly in the rural areas of developing countries like South Africa, has very little knowledge of the range of options for public participation forums. A substantial number of citizens therefore do not avail themselves of these opportunities to shape policy directly because of inertia or indifference. (Brynard,1996:42)

Khan (1998:73) links this indifference to the immense backlog South Africa has inherited in the fulfillment of basic needs and services such as housing, water and sanitation. As a consequence of these realities, it is inevitable that the priorities of the poor will continue to revolve around issues of survival, with conservation often being received as a peripheral issue, and thus of little relevance to their lives.

Unfortunately, this dichotomy in perceptions of environmental problems – the gap between the so-called 'brown' and 'green' issues – still persists in South Africa. Dr. Weaver, a South African EIA-consultant states: 'for EIA to remain relevant into the 21st Century, particularly in the context of a developing Africa as is envisaged in the African Renaissance, we need to seriously test our paradigms and rethink our approach', by, he argues, merging the green and brown agendas into an approach to environmental assessment and management which could empower local communities and ultimately alleviate poverty. (Weaver, Hounscome and Ramasar,1999:1;7)

Another factor determining the level of participation, is the communication problem between the authorities and the people, often amounting to practical difficulties such as language problems, differences in attitudes and expectations, and mutual feelings of mistrust, suspicion or resentment. (Brynard,1996:42)

A number of dilemmas of public participation, have been identified in South Africa :

- negative factors like the erosion of social fabric of society, economic decline and the rising tides of turbulence and violence could impact adversely on the degree to which people feel obliged to participate in the public management

of local government affairs. Participation may also be hampered by obstacles such as the present fragmented nature of South African cities and the growing presence of informal housing settlements. How to accommodate these people meaningfully in the participatory process produces a unique dilemma;

- another dilemma in the degree to which people may feel obliged to participate, is based on the variety of diversions for citizens which occupy their non-working time; barriers such as age and the illiteracy of some citizens; and the fact that some segments of the population may have little exposure to the media. (Brynard,1996:47)

Hamman (1999:58-60) doubts whether the inclusive concept of social learning is fully applied in the South African context. Does the public participation process really lean toward a greater degree of citizen power in decision making – the higher rungs of Arnstein's ladder – or is it a mere placation, consultation and informing exercise (the tokenism rungs of Arnstein's ladder)? As a matter of fact, this question is of fundamental importance to the analysis of effectiveness and fairness of the public participation process.

Finally, the role of environmental interest groups in South Africa should be underlined. Several of these groups are well funded and influential and have intervened effectively in many Environmental Impact Assessments. (Wood,1999:56) A new social way of thinking has emerged among environmental groups in South Africa, shifting away from conservation in the narrow sense to address the needs of local communities adjoining game parks and to suggest ways in which they can participate in decision making and benefit from tourism. (Müller,1998:90)

The emergence of 'rainbow coalitions' – alliances between religious, labour (trade unions) and environmental groupings – have been evident to enhance empowerment in South African communities. (Cock,1991:10)

In 1998 for instance, the High Court upheld a challenge by environmental groups against a large company's permit to mine coal under the Minerals Act (1991) on the grounds that an Environmental Impact Assessment was not carried out. This successful action will encourage environmental groups to bring similar suits to court where they feel that insufficient account has been taken of the EIA in decision making. (Wood,1999:56)

6.5.2. Public Participation Techniques in South Africa.

In the IEM Guidelines (1992d:8-17), issued by the South African Department of Environmental Affairs and Tourism, a number of public participation techniques are outlined, which are still applicable to Environmental Impact Assessments today :

Table 3 : IEM Public Participation Techniques.

PUBLIC PARTICIPATION TECHNIQUE	FUNCTION	LIMITATIONS	GUIDELINES
Public Meeting	<ul style="list-style-type: none"> - To provide background information and respond to questions concerning the proposal; - to identify interested and affected parties and perceive needs and concerns; - to identify alternatives and significant issues; - to provide feedback to the public; - to seek consensus on issues. 	<p>Large public meetings may create and intimidating atmosphere and prohibit people from raising questions. Meetings can be overtaken by interest groups or vocal individuals with a particular agenda.</p> <p>A public meeting does not ensure that all views are heard.</p>	<p>The most common formats are :</p> <ul style="list-style-type: none"> - briefing, followed by questions and answers; - briefing, discussion periods, small group format, report-back to meeting; - panel discussion, questions and answers, followed by issue/alternative identification; - presentation of proposals, issues and alternatives, working groups identify additional issues/alternatives; and - report-back followed by questions and additional concerns.
Telephone lines (hot lines)	<ul style="list-style-type: none"> - To locate the people who have the information concerned; - to coordinate public participation activities (time, date, place). 	<p>Not as effective as face-to-face discussions; people may feel inhibited and reference to materials for explanation cannot be used.</p> <p>Limited access to telephones by many South Africans.</p>	<ul style="list-style-type: none"> - The call should be toll-free to the public; - it should be operated by friendly staff with good communication skills; and - a firm commitment in terms of staffing, as it compromises other duties.
Exhibits/Displays	<ul style="list-style-type: none"> - To inform the broad public of a proposal or public participation programme; - to visualise the proposal, useful where illiteracy is a problem. 	<p>It requires a major commitment of staff time.</p> <p>It must be co-ordinated with other techniques in order to reach interested and affected parties.</p>	<ul style="list-style-type: none"> - They should be well advertised and set up in busy public places; - they should be informative and simply constructed, using simple and appropriate language understood by the public; and - the display should indicate whom to contact and how the public may participate in other public participation activities.
Newspaper advertisements	<ul style="list-style-type: none"> - To inform the general public on a proposal and solicit comment from them; 	<p>The information only reaches newspaper readers, excluding poor, illiterate members of the community.</p>	<ul style="list-style-type: none"> - The advertisement should be placed in a prominent place in the newspaper;

	<ul style="list-style-type: none"> - to announce public meetings or other public participation activities. 	<p>community.</p> <p>The costs are high and response rate low and cannot be represented as statistically valid.</p>	<ul style="list-style-type: none"> - the information should be accurate, clear and concise in simple language; - the advertisement should indicate whom to contact and how the public may participate in other activities; and - it should only be used as a back-up to other methods.
Written information (newsletter, reports, brochures, flyers)	<ul style="list-style-type: none"> - To maintain interest in the study and document progress; - to inform the public of the proposal and alternatives. 	<p>Attractive publications require skills not always available.</p> <p>The costs are high, reaching a limited audience.</p> <p>Allowing sufficient time for the public to read a report places time constraints on the EIA process.</p>	<ul style="list-style-type: none"> - The publications should be available in all languages spoken by the involved public; - they should be accessible to all interested and affected parties; - they should provide clear information on how the public may participate in other public participation programmes.
Surveys, interviews and questionnaires	<ul style="list-style-type: none"> - To determine public attitudes, values and perceptions on the proposal; - to gather opinions from people not participating in other activities; - to indicate representativeness of the public. 	<p>The cost of designing, administering and analysing them is high.</p> <p>Time-consuming and limited in number.</p> <p>Telephone surveys do not reach a part of the target group.</p>	<ul style="list-style-type: none"> - Interviewers should be neutral and clarify the purpose; - interviewers must be well trained using recognised sampling methods acceptable to the public; - the questionnaire should be short and well designed.
Open House	<ul style="list-style-type: none"> - To educate people on the proposal; - to provide an opportunity for direct interaction between public & proponent. 	<p>Primarily a vehicle for informing the public rather than obtaining information from them.</p> <p>It requires considerable preparation, cost and staff time.</p>	<ul style="list-style-type: none"> - Location at a valued community facility, accessible at convenient times; - well informed staff, using good communication skills; - attractive displays.
Workshops (brainstorming, nominal group technique and Delphi technique)	<ul style="list-style-type: none"> - To brief in detail on technical and complex topics; - to exchange information; - to review issues at different stages of the public participation process. 	<p>Participants need to be prepared prior to the workshop.</p> <p>It requires commitment and time.</p> <p>Certain individuals or interest groups are excluded.</p>	<ul style="list-style-type: none"> - Optimum size of group : 7 to 20 people; - daytime workshop + evening report back meeting; - a wide variety of parties, allowed to identify community representatives.
Advisory Groups	<ul style="list-style-type: none"> - To represent various interests/expertise; - to reach consensus among conflicting groups; -to link back to community; - to assist in determining terms of reference of EIA. 	<p>Expensive if members are paid.</p> <p>Not representing all the views of the interest groups.</p> <p>Only advisory, not a decision making body.</p> <p>It can be undermined by divisions amongst members.</p>	<ul style="list-style-type: none"> - It must be representative of the interested and affected parties; - a written agreement should outline the group's role and responsibility to the constituency; - regular feedback to constituencies.

Scott, Oelofse and Weaver (2000:9-10) further describe a number of local participatory forums which are also common in South Africa: development forums by local authorities and provincial departments; civic associations and ratepayers associations. Many political civic groups that challenged the apartheid state have reformulated their political objectives around living environment issues. These objectives are framed within a paradigm of social and environmental justice, largely in response to the impacts of public and private development.

However, in communities where forums are not well resourced and where capacity in terms of environmental management is low, these local organisations may not be included in mainstream environmental procedures. Nonetheless, these forums play a significant role in development planning at the local level. According to Scott, Oelofse and Weaver (2000:10), Environmental Impact Assessment procedures need to use qualitative methods to capture the wealth of local knowledge, with all its subjectivity and place-specific detail.

This participatory, process-oriented approach is an invaluable public participation technique, often ignored by Western scientists and developers. Joint identification by both users and facilitators of the nature of environmental problems and possible ways of addressing them in a transparent and community-empowering fashion can rectify a situation of lack of resources, isolation and limited confidence to correctly manage their environment. (Motteux et al,1999:228-229)

Khan (1998:73) argues that too often, public participation techniques are inappropriate for a developing country like South Africa and are more suited to a first world approach. When applied indiscriminately in poor communities, they usually generate negative results and are even harmful, either intimidating or antagonising the very communities they are attempting to involve. Such techniques include 'knock and drop' questionnaires requiring respondents to return completed questionnaires by post; lengthy questionnaires; public documents written in academic or scientific jargon not commonly understood by the target community; and public meetings held in inaccessible venues or at inconvenient times.

Earlier guideline documents on Integrated Environmental Management (IEM) have acknowledged several of the difficulties involved in securing public participation and outline possible ways of involving disadvantaged communities by :

- employing established methods of community participation, where they are acceptable to the community (consultants/researchers should work with community leaders and representative groups with the community);
- appointing a locally based organisation or credible service organisation familiar with, and acceptable to, the community, to inform them of the proposal and to conduct meetings, workshops or interviews to ascertain the most appropriate form of community involvement;
- displaying a simple and well-illustrated fact sheet of the proposal in prominent places and inviting interested persons to meet with the proponent to discuss what form community involvement should take; and
- identifying key players, social groups or committees within the communities through informal discussions and inviting them to participate in the process. (Preston, Robins and Fuggle, 1992:755-756)

At this stage of the research, it would be interesting to examine the mode and frequency of the use of interactive websites as a tool for public participation in South African environmental decision making. In this respect, Butcher (1998, <http://www.saide.org.za/butcher1/unrisd.htm>) notes that, in general, the development of new technologies like websites is serving to entrench, or even widen, the gap between rich and poor, both between countries and within them. Indeed, it seems that this trend is one of the most difficult with which South Africa has to deal. It is a particularly interesting problem, because the country is located at the crossroads between developed and developing countries, thus providing ideal opportunities for exploring how technologies can be used to achieve equity. It seems, however, that references to the widening gap between the 'haves' (only five per cent of South Africans have access to computers) and the 'have-nots' are often simply paying lip-service to the problem rather than presenting constructive solutions, involving the use of technologies.

Consequently, bridging this digital divide can only be reached through an integrated and interactive solution, matching South African telecentres (computer, telephone and Internet access) with the needs and involvement of the communities. (Goldstuck, 2000, <http://www.mg.co.za/pc/feet/ft20000929.htm>)

An example of attempting to involve the public in the environmental decision making process, is the extensive website of the Cape Metropolitan Council (IMEP,2000,<http://www.cmc.gov.za/peh/imep/involved.html>), which describes the various ways in which people can contribute to their Integrated Metropolitan Environmental Policy (IMEP) process. Access to the composition, structure and members of the stakeholder review panel, sets of minutes from the meetings, reports from public workshops or copies of the response cards are some of the opportunities for public participation through the Internet.

As mentioned before, it is important to use a combination of public participation techniques during the various stages of the Environmental Impact Assessment process in order to allow a variety of communities and individuals access to the public participation process.

6.5.3. Environmental Dispute Resolution in South Africa.

The ability of members of the public to further environmental interests through litigation and/or administrative remedies is an issue, canvassed by most legal systems. In South Africa, however, this need is particularly acute since all the signs point towards significant (particularly resource) constraints on the State's ability in future to implement environmental law effectively. This raises the need for the general public to be able to take up the necessary slack caused by this problem. (Kidd,1999:27)

South Africa's 1996 Constitution contains provisions aimed both at broadening the array of environmental issues which can be brought before courts and extending the range of people with effective access to environmental justice. Article 38 allows relief in respect of an infringement or threatened infringement of a constitutional right to be sought by : The persons who may approach a court are -

- (i) anyone acting in their own interest;
- (ii) anyone acting on behalf of another person who cannot act in their own name;

- (iii) anyone acting as a member of, or in the interest of, a group or class of persons;
- (iv) anyone acting in the public interest; and
- (v) an association acting in the interest of its members.

(South Africa,1996,<http://www.gov.za/constitution/1996/96cons2.htm#7>)

According to Robinson and Dunkley (1995:140), the wording of para (iv) in particular is vital. By robustly granting the right to enforce constitutional rights to anyone acting in the public interest, it relieves South African courts of the need to seek to devise a concept of personal interest better than the traditional approach to *locus standi* or legal standing.

Also, the extension of the scope of *locus standi* as in para (iii), to include class actions and associations who act on behalf of their members, is very important to the field of environmental dispute resolution. A class action under which a specific person brings an action against the State on behalf of a large group or class of persons, will distribute the costs between those in the class or group, which should drastically reduce the financial burden to the individuals involved. Moreover, concerned environmentalists may also have legal standing in environmental issues in which the State is involved, for example air or water pollution. (Burns,1998:225)

These constitutional provisions for legal standing are reinforced by Section 32 of National Environmental Management Act (NEMA), which also provides that a court may decide not to award costs against a person who litigates in the public interest or in the interest of protecting the environment. (Kidd,1999:27)

According to Soltau (1999:51), NEMA is a pioneering piece of legislation, stressing crucial environmental liability rules in a system of regulation. They concretise the 'polluter pays' principle, serving to put a proper value on the environment in the economic decision making of polluters. Abstract concepts such as 'significant pollution or degradation' and acceptable standards or remediation are defined by means of regulations and technical guidelines, providing the courts with the opportunity to confront and resolve some of the uncertainties in the legislation.

In specific non-constitutional environmental disputes, however, it is seldom that litigation provides the optimal resolution to the matter. Van den Berg (1998:79)

compares litigation, mediation and Board of Investigation as environmental dispute resolution processes in the South African context :

Table 5 : Comparative overview of litigation, mediation and the Board of Investigation as environmental resolution processes.

	LITIGATION	MEDIATION	BOARD OF INVESTIGATION
PUBLIC IMAGE	Can have adverse effect even if result positive ('win')	Transparency and reasonableness can have positive effect even if party compromises ('win-win')	Similar to litigation
SPEED	Generally slow	Generally faster than litigation	Generally slow
COST	Generally high	Generally lower than litigation	Generally high
FINALITY	Final subject appeal/review	Final if successful	Not final – Minister may decide not to follow it
SUSTAINABILITY	Questionable – normally low	High if all stakeholders involved	N/A – not final
SUPPLENESS	Very rigid	Totally supple	Depends terms of reference
RELATIONSHIP PARTNERS	Destructive	Constructive	Destructive
HUMAN RESOURCES	Negative : traumatic	Still traumatic but often therapeutic	Less traumatic than litigation

As appears from Table 5, litigation is normally expensive and slow, often binary (only two outcomes exist), generally destructive of the relationship between the parties, traumatic to litigants and even witnesses, and conducive to damage to the public image of especially developers (even if they are successful in court). The limited number of outcomes are incompatible with the extreme sophistication and complexity of natural processes. (van den Berg, 1998:79)

The ad hoc Board of Investigation, appointed to assist the Minister of Environmental Affairs and Tourism, has no legal decision making power and can consequently not be regarded as a dispute resolution method *strictu sensu*. The Chairman of the Board said the following in the Steyn Commission Report : 'We

reiterate the view, however, that ad hoc inquiries undertaken by this Board should not be standard practice. Other methods for breaking deadlocks – such as early mediation during the Environmental Impact Assessment process, appear to us to be a preferred option’. (van den Berg,1998:80)

Environmental mediation, being most effective abroad, is not really in use in South Africa yet. It normally involves the introduction of a neutral and acceptable party, assisting disputants in reaching a mutually acceptable settlement. Mediation is all about creating as many options for settlement as possible, which makes it most suitable for dealing with environmental matters, reflecting the optimum balance between conservation and development. To van den Berg (1998:85), it seems logical to extend State funds, already used for environmental dispute resolution by the Board of Investigation, to mediation, which would often be cheaper and usually have a better chance of success. The Minister should further have the authority to encourage mediation both by resource-provision and the threat of an imposed solution.

Finally, the EIA Regulations (Department of Environmental Affairs and Tourism,1997:47) make provision for appeal by any person who feels aggrieved by a decision made by the relevant authority in terms of these regulations. ‘Any person’ therefore includes the applicant, interested party or members of the public.

6.6. Formal and Informal Public Participation Opportunities in the Environmental Impact Assessment Process in South Africa.

In South Africa, public participation is mandatory in the preparation of the scoping report and in carrying out the full study (where this is required). The public consultations which have been undertaken must be fully described in a scoping report and in the final Environmental Impact Assessment report. The EIA report becomes a public document, but not until after the approval decision on the environmental acceptability of the project has been made. These provisions reflect a more general move towards participatory democracy from a more authoritarian tradition of decision making. (George,1998,<http://www.art.man.ac.uk/eia/nl17afri.htm>)

The 1997 EIA Regulations (Department of Environmental Affairs and Tourism,1998:27) describe the responsibilities for the interested and affected parties during the Environmental Impact Assessment process as follows :

‘The interested parties are responsible to :

- provide input and comments during various stages of the EIA process. It is suggested that input and comments of the interested parties be obtained during the following stages :
- the scoping stage (identify the issues and alternatives to be considered);
- assessing and mitigating impacts;
- review of the environmental impact report; and
- implementation and monitoring
- provide their inputs and comments with the specific time-frames as specified by the applicant/consultant and relevant authority’.

Interestingly, it is the proponent and not the relevant authority (as in most countries) who is responsible for consultation and public participation. The impression that information, rather than opinion, is being sought from the public participation process is overwhelming. (Wood,1999:56)

The EIA Guidelines of 1998 go much further than the Regulations. They recommend that the characteristically named ‘interested and affected parties’ are involved in reviewing both the scoping report and the EIS Report and give brief guidance on the conduct of these reviews. (Wood,1999:56)

6.6.1. The Screening Stage.

During the screening stage of the Environmental Impact Assessment process, the relevant authority must provide the applicant/consultant with the necessary application form, after which the authority can register the application. The objectives of such a register are to facilitate public access to information, upon which required environmental reports are based and to ensure efficient and convenient

access to such information for the public. (Department of Environmental Affairs and Tourism,1998:24)

Another way of ensuring that all interested parties are afforded an opportunity to comment on development projects applications, is to streamline the advertising process, both on-site and press advertising. In addition to advertising, developers are, as a minimum, expected to contact adjacent landowners, civic or resident associations and the local authority to obtain their comments on the development proposal. Proof of such correspondence and communications is required in the scoping report. (Department of Environmental Affairs and Tourism,1998:25)

Duthie (1997:84) argues that, where feasible, involvement of the authorities and interested and affected parties at this early stage can lead to valuable synergies and creative thinking by people who are more familiar with the local environment. Unfortunately, the reality is that these approaches more often result in a knee-jerk 'NIMBY' (Not-In-My-Back-Yard) response from the interested and affected parties, fuelled by inflammatory media reports, which immediately polarise a potentially constructive interaction.

During the Environmental Impact Assessment process for the proposed development of an environmental education centre at Rietvlei, Milnerton (CSIR,1999:2.5), a list of interested and affected parties was compiled at the outset of the EIA; some 180 parties were identified, ranging from government and council, to ratepayers associations, local companies, education organisations, schools, conservation organisations, press, political parties and local residents. Appendix VI illustrates the public participation process during the Rietvlei EIA. (CSIR,1999:5;2.7)

6.6.2. The Scoping Stage.

Meaningful public participation remains one of the greatest strengths of the Integrated Environmental Management procedure (of which EIA is part) for the developer, the public and authorities in South Africa. While public participation in the conceptual design phase may not always be practical, it is essential during the scoping and review stage of the Environmental Impact Assessment. (Duthie,1997:84)

One of the most important aspects of scoping is the identification and notification of parties who would be interested in, or affected by, the proposed development. According to Preston, Robins and Fuggle (1992:755), established lists and the process of networking are probably the most effective methods of making direct contact with interested and affected parties. However, for certain regional or national proposals in South Africa, there is no clearly definable public. In these instances, notifying the public through advertisements in the press or other media may be the most appropriate approach.

During the scoping stage, the applicant/consultant is requested to submit a scoping report to the relevant authority, including *inter alia* :

- a description of the discussion with the key interested parties, by collating available information and identifying information gaps;
- a provision of feedback on the way comments have been incorporated;
- an appendix containing a description of the public participation process, including a list of interested parties and their comments; and
- a timetable, setting out when the above-mentioned tasks will be completed.

(Department of Environmental Affairs and Tourism, 1998:27)

These requirements indicate that scoping in general and public participation during the scoping stage in particular is still considered to be crucial in South Africa, unlike the situation in the United Kingdom, as discussed before. (Wood, 1999:55)

Based on the experience of the EIA-consultants Weaver and Rossouw (1999:2;10), much emphasis is generally placed on scoping or 'focussing the EIA' in South Africa, whereby up to 30 per cent of the time and effort involved in large EIA-projects goes into the scoping phase. They further stress the importance of an 'issue oriented approach', in which a manageable number of important questions are asked. If the EIA-team effectively captures the right questions, reflecting the areas of concern, it will then have the basis for a well-focussed investigation, providing, in turn, the decision makers and the public with the information needed for testing their concerns.

6.6.3. The Reporting Stage.

The Guidelines for Report Requirements by the Department of Environmental Affairs and Tourism (1992b:17) recommend that an outline of the public participation process should be provided as appendix to the main Environmental Impact Assessment Report. This outline is particularly important where serious objections are raised by concerned parties. The EIA Regulations of 1997 (Department of Environmental Affairs and Tourism, 1998:32) describe the required public participation process appendix as follows :

- the identification of parties that will be affected by the proposed activity or development;
- the identification of parties that have an interest in the proposal(s) or the environment(s) under consideration;
- the establishment and record of the procedure by which the identified and non-identified interested and affected parties were afforded the opportunity to participate at all appropriate stages of the preparation of the environmental scoping report;
- the provision for interested and affected parties to express their views about the scope of the Environmental Impact Report, including alternatives and issues that were investigated;
- a list of issues that were identified as being of concern to interested and affected parties;
- notification criteria, which entails the reason for their participation in the various stages of the process, where the report can be obtained, where it can be examined (libraries), where and to whom the comments on such reports should be sent to, the specified period for receiving comments; and
- a record of all the views of and correspondence with interested and affected parties is to form an addendum to the report.

According to Duthie (1997:88), one of the current problems with EIA-practice in South Africa to date, is the perception by the public that Environmental Impact Reports may be biased. The objectivity of EIA's and the professionals that undertake

them are often viewed with some scepticism by the public; in an environment where consultants are paid by developers and often have to work closely with them to influence project design and ensure adequate consideration of environmental issues, this remark may be justified. Therefore, reasonable public input, managed in an open and accountable fashion, should ensure that the terms of reference are collectively determined, safeguarding against 'sweetheart' reports.

6.6.4. The EIS Review and Decision Making Stage.

Once the Environmental Impact Report has been completed, there is further opportunity for public participation during its review. The review is aimed at assessing the content and adequacy of the report as a decision making tool and is mainly undertaken by the authorities and key interested and affected parties. However, EIAs for controversial developments may require additional opportunity for public input through public hearings, as was the case with the proposed heavy minerals mining at St. Lucia and the Saldanha Steel Mill. (Duthie,1997:87)

Appendix VII shows submissions from interested and affected parties in the Rietvlei EIA, including comments on the draft EIA Report. (CSIR,1999:5-8)

As far as public involvement in the decision making stage of the EIA process is concerned, one should not underestimate the prevalence of many environmental interest groups in South Africa. Often, they act as lobbyists by influencing decision makers. According to Hamman (1999:125-128), who interviewed a few environmental associations in the Garden Route region, the primary reasons why there is such a strong environmental lobby in South Africa, relates to the generally important value of the environment to (mainly white, influential) local residents in terms of the high amenity value of the natural environment, the aesthetic appeal of natural landscapes, the biodiversity and the value of eco-tourism. The Wildlife and Environment Society of South Africa for instance, is one of the oldest conservation groups in South Africa with the motto 'To promote public participation in caring for the Earth'. The Outeniqualand Trust is another environmental organisation with members 'using their influence coming from their previous lives to influence government decisions. They're not activists in any way – they do not want to create a

storm and go to the press...more behind the scenes'. The Garden Route Trust on the other hand, started as a small group of individuals lobbying as a watchdog, and gradually made pro-active use of the media, engaging with issues of poverty and social transformation by involving disadvantaged communities.

The notion of sensitive development, which would not unduly harm the environment but provide benefits to the poor, is a significant theme worth exploring in other research topics.

6.6.5. The Follow Up Stage.

There is no provision in either the Environment Conservation Act or the EIA Regulations for any monitoring of EIA systems or for keeping record of EIA documents. The Department of Environmental Affairs and Tourism sees this as the responsibility of the provincial governments, or, where EIA responsibilities are delegated, of the appropriate local government. However, this view is not shared by these bodies. (Wood,1999:56)

The fragmentation of EIA responsibilities, the understaffing of relevant authorities and the unaccountable bureaucratic culture in South Africa all militate against adequate EIA monitoring. Documents are, however, generally publicly available to persistent enquirers. Still, the problem of crippling under-funding and under-staffing of provincial and local authorities means that they must rely on the complaints of neighbours and the integrity of developers and their consultants for information about non-compliance, because the capacity of relevant authorities to take enforcement action is severely limited. (Wood,1999:56)

One of the principal weaknesses of the South African EIA system is, according to Woods (1999:57), the lack of monitoring, as neither the EIA Regulations nor the EIA Guidelines refer to it. However, the National Environmental Management Act (NEMA) requires the 'investigation and formulation of arrangements for the monitoring and management of environmental impacts'.

Yet, little evidence has been found in the academic literature that the South African public could possibly play any role in follow up activities during the EIA

process. The public consultation process in the Rietvlei-EIA for example does not even extend beyond the reporting phase... (see Appendix VI).

6.7. Conclusion.

This chapter has examined public participation in Environmental Impact Assessment in South Africa. First, the appropriate legislative framework as a legal basis for public participation was reviewed, indicating that the recently promulgated EIA legislation is a secure legal basis for public participation. Second, the institutional set-up in South Africa was highlighted, examining relevant competencies, the role of the civil service and their capacities and/or impediments to implement the EIA legislation. The core part of this chapter reviewed the public as cornerstone of effective public participation: what is the nature of the public, which public participation techniques are commonly employed and how can the public resolve environmental disputes successfully? Finally, formal and informal public participation at the various stages of the EIA process were explored, coming up with a meaningful picture of the way how the public participates effectively in the South African environmental decision making process.

Certainly, the promulgation of legislation for compulsory EIA may be regarded as a very significant step in formalising Environmental Impact Assessment in South Africa and is in line with similar developments internationally. This should lead to more responsible and environmentally sensitive development and a secure starting point to ensure effective public participation. The fact that the public is mandated to participate at the early stages of the EIA process is an achievement.

However, a number of weaknesses have emerged during the analysis of the South African context. The legislation seems to be fragmented and uncoordinated, further weakening the already insufficient institutional capacity at the provincial and local spheres of government. Concerning the level of power the public can exhibit during the Environmental Impact Assessment process, the impression rises that public participation mechanisms favour those with the incentive and resources to participate. It remains to be seen whether the public is representative and inclusive. Channels of

interaction between proponents and the interested and affected parties should be revised critically in terms of representation and equality, relevant to the specific context of the EIA target area.

Furthermore, the extensive provisions for public participation during the scoping and EIA Report phases do not match with the limited rights to scrutinise the implementation of the EIA recommendations and decisions during the follow up stage.

Inevitably, various steps need to be taken to overcome these impediments, yet one must acknowledge that the South African constitutional right to a healthy environment has become more evident in a relatively short time, thanks to the new EIA/public participation route. Many elements are still being tried and tested but some of the difficulties can be resolved as practice develops and experience is gained.

Chapter 7 : Public Participation in Environmental Impact Assessment in the United States.

"I can think of no other initiative in our history that had such a broad outreach, that cut across so many functions of government, and that had such a fundamental impact on the way government does business... I am qualified to characterise that process as truly a revolution in government policy and decision-making". Russell Train, former administrator of the US Environmental Protection Agency and former chair of the US Council for Environmental Quality.

7.1. Introduction.

Many countries, including the United Kingdom and South Africa, have patterned environmental impact laws and policies after the National Environmental Policy Act (1969) of the United States. It is therefore relevant to choose the United States as last country of this comparative analysis, since the maturity of its Environmental Impact Assessment system can serve as benchmark for scrutinising the public participation level in the EIA process as driving force for more participatory environmental decision making.

The various factors contributing towards effective public participation in the EIA process are going to be highlighted, by first analysing the legislative provisions and institutional set-ups in the United States, in relation to their implications for effective public participation during the EIA process. Furthermore, the core part of this chapter reviews the public as cornerstone of effective public participation: what is the nature of the American public, which public participation techniques are being used and which role does environmental dispute resolution play as an enforcement tool for compliance? Finally, formal and informal public participation at the various stages of the Environmental Impact Assessment process are examined, in order to understand the role of involving the public into the decision making process in the United States.

7.2. Background.

The United States has a total area of 9.4 million square kilometers and a population of over 255 million people. With such a low population density (27 people per square kilometre), it is hardly surprising that a frontier ethic developed, in which controls over land use were regarded as a curtailment of individual liberty. Partly as a result of this frontier ethic, there is a historic distrust of government institutions in the United States and a consequent desire for decision making which is open to inspection and intervention by the public.(Wood,1995:16) Indeed, Americans remain as ambivalent about concentrated political authority as they were two centuries ago when the Constitution was framed. They are quick to see the ills that government can inflict and slow to perceive the good things that a responsible national state can do for all citizens. (Skocpol,1995:32)

President Roosevelt had called for foresight in respect to pollution control during his 1908 Conference on Conservation, but it was not until the second half of the century that effective legislation was enacted. Discussions leading to the National Environmental Policy Act (NEPA) began in the early 1960s, when the need was perceived for the United States to have a declaration of national environmental policy and an action-forcing provision. (Barrow,1997:168)

Roberts (1995:222) describes a number of factors contributing to the *Zeitgeist* that demanded a more participatory democracy in the US. Events such as Watergate and the Vietnam War created distrust and disillusionment; the perception of government as acting in the best interests of those it served was steadily eroded. This erosion was further enhanced by the rise of the consumer and environmental movements which held agencies and corporations accountable to the consumer and exposed - with help from the media - the pitfalls of technological development driven solely by economic considerations. For the first time in history, when poverty, oppression and environmental degradation provoked anger, frustration and direct action by a minority, millions of people had access to the images and reacted. The public appeared to possess a conscience that government and industry seem to lack.

The 1960s further ushered in a growing concern for environmental quality and a recognition of the environmental impacts of government activities. The American

public demanded change, which took place in the form of federal legislation: the National Environmental Policy Act (NEPA) of 1969, which will serve as a focal point of departure in this chapter. Simultaneously, the sixties witnessed the development of a new field, called environmental planning and management, by putting knowledge of the ecosystem into the planning process to create a 'better fit between the works of humans and nature'. Many organisations that otherwise might not be involved with environmental planning were suddenly thrust into this area because of NEPA's requirements for Environmental Impact Assessment. (Shepherd and Bowler,1997:726)

Prior to 1969, the American philosophy concerning negative environmental effects of major projects such as highways, industrial plants, shopping centres or housing developments, was basically a philosophy, ignoring these effects during the planning stages of the project. After the work was completed and the environmental effects were apparent, the attitude was generally one of 'too bad, but it could not be avoided'. (Bregman and Mackenthun,1992:1)

Nowadays, the evaluation of public participation is viewed as another way for American agencies to mark progress towards goals of environmental quality. Government agencies, including those in the environmental field, are notably moving towards performance-based management. Under the auspices of the National Environmental Partnership Program, agencies are creating indicators to track actual environmental progress, such as improvements in air and water quality, rather than measuring effectiveness largely in terms of the bean counting of permits granted, documents released or vehicles inspected. (Chess,2000:771-772)

Ultimately, federal agency natural resource management is moving away from commodity and user-based policy orientations, beyond the grazing, mining, timber and water 'lords of yesterday' that have dominated the west for decades. More complex systemic approaches, characterised as ecosystem management and natural resource sustainability emerge, requiring systems-thinking and consideration of cultural factors. It must involve good science, good laws, good economics, and good communities. (Daniels and Walker,1996:72)

Finally, the much acclaimed 'Reinventing Government' by Osborne and Gaebler (1992:66-75) contributed to a new paradigm in public sector circles and

beyond. The authors offer critical insight in the way the public sector can put to use some of the same anti-bureaucratic and decentralised approaches that have revolutionised parts of American business. The section 'Community-Owned Government: Empowering rather than Serving' explains one of the principles that refocus public sector decision making, empowering citizens through participatory democracy by illuminating the role of communities because, for example:

- communities have more commitment to their members than service delivery systems have to their clients;
- professionals and bureaucracies deliver services; communities solve problems;
- communities are more flexible and creative than large service bureaucracies;
- communities enforce standards of behaviour more effectively than bureaucracies; and
- communities focus on capacities; service systems focus on deficiencies.

The so-called reinventing government movement in the United States - more widely known as New Public Management - drives the perceived need to shift from traditional, bureaucratic, rules-oriented approach to a results-centered model. (Gregory,1999:63) Against the background of public sector reforms, the quest for public service as a public trust, embodying an ethos that ensures minimum levels of personal corruption, seems relevant. The relationship between building social capital and effective democratic governance is further explored by Putnam (in Gregory,1999:64-65), who argues that norms and networks of civic engagement foster rather than suppress economic growth and enhance effectiveness of public institutions.

One assumes that Environmental Impact Assessment occurs only in the public sphere, the emphasis being on how it might change governmental politics and public policy processes. In the States, however, EIA is often undertaken voluntarily or semi-voluntarily by the private sector. The specific procedures, content, or use of EIA in this context are not specified or regulated at all by government. Rather, it is a specification of EIA by business on business, on the very commercial activity of buying and selling real estate. The motivation is to protect lenders against financial risk from future discovery of environmental degradation. Another interpretation of this move towards eco-friendly business, is the integrative ideas of ecology,

institutionalisation of anticipation and prevention, new participatory practices, deliberation and social learning. (Bartlett and Kurian,1999:420)

7.3. Appropriate Legislative Framework for Public Participation in Environmental Impact Assessment in the United States.

Legislation for Environmental Impact Assessment (and virtually the first use of the expression) appears in Section 102(2)C of NEPA, where US federal agencies are required to prepare an Environmental Impact Statement, bearing the costs against taxes and sending copies to federal and state agencies and to the public, prior to taking action.(Barrow,1997:168) NEPA has actually given a federal dimension to land-use planning which existed in only rudimentary form prior to 1970, and has created a situation where decisions on major federal activities can only be taken with foreknowledge of their likely environmental consequences. (Wathern,1988:3)

In brief, there are three main elements in NEPA. First, a general policy for the environment, long on rhetoric and aspiration, but short on concrete measures. Secondly, Section 102(2)(C) requires the preparation of an Environmental Impact Statement for 'major federal actions significantly affecting the quality of the human environment'. Finally, the Act established the Council on Environmental Quality (CEQ) to administer the provisions of the legislation.(Wathern,1988:23) Furthermore, NEPA mandates public participation in assessing the environmental consequences of major federal actions. Consequently, public review and input on environmental reviews has become an integral part of the evaluation process. Benefits of public participation include (Bregman and Mackenthun,1992:35-36):

- resolution of conflicts among different groups during project planning;
- incorporation of a more comprehensive data base due to public input;
- more thorough identification and analysis of issues; and
- more comprehensive computation of costs and benefits to societal groups.

The CEQ Regulations stipulate the need for public participation in terms of scoping, general public involvement requirements and the review process for draft Environmental Impact Statements. Therefore, the EIA process requires public participation, with the best approach for an agency to take, being an active and positive one, as compared to a passive approach to fulfill only the letter of the CEQ Regulations. (Canter,1996:588)

To summarise, public participation is both implicitly included in the NEPA process and explicitly mandated in CEQ Regulations. The following actions are required of Federal agencies responsible for ensuring NEPA compliance :

- a diligent effort to involve the public in preparing and implementing NEPA procedures;
 - providing public notice of meetings and available documents to (1) specific requestors, (2) the Federal Register for actions of national concern, (3) state and areawide clearinghouses, (4) Indian tribes on reservations, (5) local newspapers or other local media, (6) community organisations, (7) newsletters, and (8) individuals by direct mailing;
 - holding public hearings and meetings where there is substantial environmental controversy concerning the proposed action or a request by another agency with jurisdiction over the action;
 - soliciting information from the public;
 - explaining sources of information available for interested persons; and
 - making the Environmental Impact Statement and supporting information readily available in conveniently located public places such as libraries.
- (Bregman and Mackenthun,1992:37)

According to Tilleman (1995:341), few environmental laws have been more popular with environmentalists, because the underlying premises of NEPA and other EIA laws are logical. NEPA is a 'look before you leap' law and is legitimised as a necessary aspect of planning and consideration before development. These EIA requirements incorporate procedures to force planners and project proponents to stop and make early determinations about the future problems that could possibly arise.

It is critical to pinpoint those projects where formal participation is expected to be found. At the federal level, only those projects which pass a certain threshold are subject to the Environmental Impact Statement requirement. Although there is much litigation over the parameters of each of these thresholds, it suffice to say that agencies, proponents and the public must look to the statute and the regulations and then determine whether the project must receive full EIA scrutiny. The courts will ultimately decide whether interested parties have followed proper procedures. (Tillman,1995:422)

Interestingly, these courts have ruled that the intent of NEPA is to ensure that the public is provided with complete and accurate information about the environmental consequences of agencies' actions in the decision making process. As such, NEPA is described as a 'full-disclosure' law, placing a responsibility on federal agencies to investigate fully and to reveal the likely consequences of their actions. The crucial issue, however, remains whether the provisions of the Act are substantive – compelling agencies to adopt the least environmentally disruptive option – or procedural – requiring agencies only to comply with the procedures specified. (Wathern,1988:24)

The various requirements of NEPA have been clarified over the years by both the courts and the Council on Environmental Quality (CEQ) Regulations, themselves based upon legal rulings. Further guidance has been issued by CEQ to clarify matters not covered fully in the Regulations. While the substantive intent of NEPA - to change the nature of federal decision making - has been gradually whittled away over the years to become a largely procedural requirement, the legal basis of the American EIA system is clearly specified by it. The detailed steps in the process are specified in the Regulations, which are widely regarded as providing a model basis for an EIA system, being comprehensive, specific, clear and surprisingly readable. (Wood,1995:75)

A legal device often used by American environmentalists is the consent decree between them and the agency. The narrow scope of the arbitrary standards of judicial review under NEPA limits the chances environmentalists may have of protecting environmental concerns by ensuring compliance with an EIS. As an alternative to judgment granted within a court's limited discretion, parties to NEPA litigation could write a consent decree that would be subject to court approval. The consent decree

provides greater flexibility because the parties may be able to fashion remedies that would not be possible if the court were acting alone. Also, a consent decree could be used to mitigate the adverse environmental impacts of proposed federal action. If private parties agree to limit some of their development rights in a consent decree, there would be fewer adverse effects to identify and mitigate in an EIS. In exchange for limiting development and reporting activities to environmental groups, environmentalists would forgo their right to challenge the sufficiency of the EIS. (Cardone,1990:184)

In retrospect, NEPA can now be seen as the first step in an environmental revolution in the United States. One of its authors said at the time that it was ‘the most far reaching environmental and conservation measure ever enacted by the Congress’. (Wood,1995:17) According to Sadler (1996:24), the spirit and purpose of Environmental Impact Assessment in NEPA has stood the test of time. The Act has significantly influenced process development and can be fairly described, paraphrasing the US Council on Environmental Quality, as the ‘Magna Carta’ of the field.

Another important piece of legislation is the Executive Order (EO) 12898, issued by President Clinton in 1994, which requires federal agencies to consider environmental justice in conducting impact evaluations under NEPA. It refers to the fair treatment and meaningful involvement of all people, regardless of race, colour, national origin or income with respect to the development, implementation, and enforcement of environmental laws. Minority and low-income groups should therefore not bear a disproportionate share of the negative environmental impacts of government actions. (Bass,1998:83)

Consequently, long-awaited guidance from the Council on Environmental Quality followed in 1996, assisting federal agencies to incorporate environmental justice concerns into their NEPA procedures, by more actively examining the following issues :

- the composition of the affected community or population to determine whether minority or low-income communities are present;
- relevant public health data or projects concerning the potential for cumulative exposure to health or environmental hazards;

- cultural, social, occupational, or economic factors that may amplify the effects of agency action;
- public participation strategies, and
- community, or when applicable, tribal representation in the process.

Focused on public participation, the CEQ recommends to use innovative approaches to overcome linguistic, institutional, cultural, economic and historic barriers to effective participation, including direct coordination with affected individuals and organisations, translations of important documents, personal interviews or recordings to capture nonwritten comments, newsletters or summaries, innovative meeting formats that encourage participation, holding meetings in convenient locations, and providing assistance for hearing- or sight-impaired persons. (Bass,1998:86-87)

7.4. Institutional Framework for Public Participation in Environmental Impact Assessment in the United States.

The NEPA legislation was enacted by the Congress in recognition of the need for care in the use of the country's natural resources. It is important to appreciate that the federal government, through its various agencies, plays a crucial custodial role in the management of natural resources. Approximately 738 million acres, about a third of the country, are the responsibility of the federal government, and Congress has the authority to determine how these public lands are used. Enacting NEPA sought to remedy the lack of environmental awareness of many federal agencies, whose policies were in conflict with the general public interest with its main function to hold the federal government accountable as trustee for the protection of the American environment. (Wathern,1988:23)

It is worth noting how the American government system affects the EIA process. In the presidential system of the United States, the judiciary, having received constitutional independence, plays a separate and coequal role in the governmental system, founded upon the need to have and preserve the proper tripartite checks and

balances. As the former Chief Justice of the U.S. Supreme Court stated : '*Once Congress, exercising its delegated powers, has decided the order of priorities in a given area, it is for the Executive to administer the laws and for the courts to enforce them when enforcement is sought*'. (Tilleman,1995:393-394)

Canter (1996:591-592) identifies two institutional key points which continually surface in implementing public participation programmes in the United States :

- *coordination* : one of the most critical problems for the American government today is the relationship between different governmental units and levels. Often policies and/or plans of one agency are implemented by another; projects or facilities of one agency may even be operated or maintained by a second, third or fourth. Furthermore, actions are rarely limited to federal agencies. State, local and private actors may also be involved, and each agency may embody different missions and purposes. As a consequence of this mix of purposes and actors, different public participation programmes are developed, sometimes ameliorating inter-agency and citizen-government conflict; sometimes generating such conflict;
- *control* : when a federal agency deals with a public policy issue, its responsibility is to find and assure the federal interest. Such interest frequently takes the form of centralised control through regulation, licensing or funding. Citizen involvement, however, is by nature a decentralising concept. Therefore, a tension always exist between the centralised needs of the agency and the decentralised interests of the citizens.

Policy networks have also developed through institutionalised contacts between legislators and affected groups and interests. According to Heywood (1997:77;263), lobbying activities dominate much of domestic policy making in the States. Yet, the 'middle levels of power' (Congress and state governments) and groups such as organised labour, small businesses and lobbyists are only able to exert influence at the margins of the policy process. In contrast to the pluralist notion of a wide and broadly democratic dispersal of power, the USA is dominated by a nexus of leading elite groups, comprised of big business, the US military and political cliques surrounding the President.

In the environmental area, the American federal government almost always has jurisdiction, usually because natural resources cross state lines or affect resources in other states in some way. The chief federal environmental agency is the Environmental Protection Agency (EPA), which has a national headquarters office and regional offices similar to the federal districts in which courts sit. (Robinson and Dunkley,1995:7) Appendix VIII illustrates the role of EPA in a humoristic way.

Federal agencies are further expected to co-operate with states as much as possible in the EIA process, with the goal to reduce intergovernmental duplication, where at all possible. (Tilleman,1995:380) Yet, the combination of NEPA, CEQ guidelines and the guidance issued by individual agencies, generates considerable regulatory redundancy, conflict and inconsistency, where even some agency officials are uncertain as to what their responsibilities are. (Wathern,1988:24)

In the United States, the responsible agency must undertake the preparation of the Environmental Impact Assessment work. The agency is still responsible for the EIA, even if it delegates the work to a consultant or cooperating agency. Hence, the responsible agency's own rules as far as participation requirements are concerned, must be carefully read. (Tilleman,1995:349)

It remains to be seen whether agencies will be able to continue performing efficiently and effectively under different circumstances. The anti-environment Bush Administration proposed a budget that substantially weakens federal environmental programmes. The budget cut includes a US \$ 500 million (over six per cent) from the Environmental Protection Agency (EPA)'s budget. (Sierra Club,2001,http://www.sierraclub.org/politics/bush/w_watch.asp) Even more worrying is the fact that Bush has nominated officials with extreme anti-environmental records to key environmental posts. (Earth Justice,2001, <http://www.earthjustice.org/policy/admin/>)

Fortunately, the value of the American EIA system rests on what Taylor (in:Wandesforde-Smith and Kerbavaz,1988:189) calls its internal structure. It requires some strategic choices by Congress and the White House to maintain the foundations, and an authoritative overseer, probably the courts. By and large, the value of Environmental Impact Assessment ought to be realisable, despite the comings and goings of particular individuals, the political ups and downs of election returns, and general social and economic conditions.

Another concern is that civil servants are often not capable to deal with qualitative public input. In an account of his experiences with the Environmental Impact Statement process, one observer commented on a particular agency's apparent inability to deal with the public input that NEPA had required it to request. The agency simply did not know what to do with this qualitative data, however empirically sound, and rejected most of it as too subjective to be used in its planning and decision making. The efforts of local residents therefore dwindled in the face of the agency's unwavering ability to take their views out of account. (Boggs,1991:40)

Canter and Clark (1997:316-317) examined strengths and weaknesses of NEPA in a questionnaire survey among academics and NEPA-practitioners. The survey participants identified *inter alia* the following strengths of NEPA legislation :

- it raises the relative priority of environmental concerns in the minds of previously unconcerned agency staff;
- it promotes honesty and by forcing public disclosure eliminates corruption in public works contracting; and
- it adds a needed 'corporate culture' component to agency thinking.

Yet, the following NEPA issues need prioritisation for improvement :

- federal personnel, implementing NEPA, need more training; and
- federal decision makers and high-level managers do not fully understand how NEPA affects their decision making.

Apparently, the integrity of EIA consultants is another key issue of concern. The participants recommended that 'the EIA consultants submit their reports either under oath or under a certification as an expert that carries consequences if the consultant has misrepresented (or lied) about facts. Today, the few consultants that bend or omit the facts to favour a proponent or make false allegations against a project, get away free. They must be held accountable as experts. (Canter and Clark,1997:316-317)

Tilleman (1995:434) finally recommends that agencies must look favourably on public participation as a means to discover the environmental impact and the economic impact of development proposals. Environmental impact is better understood when proponents consult with many sources: representatives of science,

agriculture, industry, labour, conservation organisations, educational institutions, other governments, and the public. Public participation is one way to ensure decision makers do not fail to consider the relevant stakeholders and factors. Surely, uninformed decision making is a harm to be avoided.

7.5. The Public.

7.5.1. The Nature of the American Public.

According to Conway (1991:2), many American citizens are uninterested in public affairs and participation rates are low. Only a small proportion of the electorate has much knowledge about the structure and functions of government, and the mass public is often unaware of even major policy problems being considered by federal, state or local government. Moreover, a degree of complacency on the part of the general public during the early days of NEPA activity was observed. Although many people were concerned about environmental problems and some people and organisations took very active roles, there still was a widespread willingness to let the experts solve the problems. Citizens who want and should have a role in the decision making process, often lack familiarity with technical topics.(Bregman and Mackenthun,1992:36)

An American study, examining the attitudinal and demographic determinants of public preferences towards waste facility siting, underlines the earlier British and South African findings; the source of public opposition and/or interest in environmental matters is characterised as a 'NIMBY' or Not-In-My-Backyard attitude. People perceive an imbalance between the benefits they will receive from hosting a disposals facility, such as jobs and tax revenues, and the costs they will bear, potential risks to the environment and health. These perceptions of costs and benefits are strongly correlated with distance, social characteristics (e.g. job profiles) and demographic/behavioural variables (e.g. age, sex, income). (Lober,1993:348)

Beattie (1995:113) points out that EIA professionals should realise that most members of a sophisticated public are already aware of the fact that EIAs are advocacy documents. Indeed, public criticism of EIAs may reveal value biases that professionals were not aware of when conducting the Environmental Impact Assessment. The public learns about EIAs by reading and critiquing them as part of a broader political process. Therefore, there should be a way that EIA professionals take sides honestly along publicly controversial projects, promoting their analysis while making their values and biases clear. Putting assumptions more explicitly on the table and admitting in advance that these assumptions reflect certain values can help to focus debates about EIAs. Public criticism of these assumptions may not always be pleasant, but it can lead to improvements that allow models to reflect values of those outside the professional cliques.

As mentioned before, the image of a large, cohesive, like-thinking public is obsolete, if it ever existed. In the management of every proposed action, one must deal with many different publics, each with its own special interests and peculiarities. Some, such as environmental activist groups, are always, practically by definition, interested in the proposed action and its outcome. Similarly, elected and appointed government officials form another public, one which must be handled with care. Property owners, outdoor recreationists, farmers and ranchers, real estate developers and retirees are other examples of publics which may be involved in the action. (Jain et al,1993:224)

In no other country, environmental interest groups are so able to assemble concerned individuals into large and influential watchdog units. Increasingly, interest groups and NGO's broaden their scope by building up international alliances and networks. Greenpeace, for example, has established offices in over 30 countries with an annual budget of US \$ 50 million, conducting regular lobbying campaigns in Washington DC and Brussels. (Heywood,1997:265)

Another influential interest group is the Sierra Club, an American environmental public charity with 700,000 members, assessing President Bush's appalling environmental track record, and issueing representative polling data on environmental actions. A national survey shows that majorities of American voters oppose Bush's key environmental policy proposals. Moreover, most voters have just begun to learn about the Bush Administration's environmental proposals, with a 52

per cent negative job rating for Bush after a balanced discussion. (Sierra Club, 2001, <http://www.sierraclub.org>) The fact that the American public is giving failing marks to the government's environmental policy, may have many repercussions. It seems that, by erring on the environment, Bush has miscalculated how important it has become to Americans. Ironically, the environment has elevated into a key national issue. To roll back Clinton's environmental protection measures have generated the greatest outcry among Americans, especially when, for instance, the Roadless Areas Rule is the result of 600 public hearings and 1.6 million public comments. Consequently, many conservation groups are asking, as the Bush Administration passed its 100-day mark in office : *'Can 100 days reverse more than 30 years of environmental regulations in the States ?'* (Higgins,2001,http://www.enn.com/news/enn-stories/2001/04//04302001/bushover_43213.asp)

Jasanoff (1996:65) further states that the environmental justice movement has reprised the belief that autocratic government produces ill-considered decisions, with little chance of public satisfaction, even when decisions are made in the name of expertise. An example from California neatly makes this point. A dispute arose over siting a toxic waste incinerator in Kettleman City, a small farming community with a population of 70 per cent Spanish-speaking Latino's. The county prepared a 1000-page EIA-report on the proposed incinerator, but it refused to translate the document into Spanish, claiming that it had no legal responsibility to do so.

Ramamoorthy and Baddaloo (1991:434) finally observe that public interest groups have changed with time. The ones with radical attitudes have developed into well-trained and experienced negotiators who are aware of the essentials of the regulatory decision making processes. They have become effective spokespersons through experience and have learned the need for making realistic compromises in order to achieve their desired goals. Intervenor groups have not only been able to provide their own expertise, but they have been known to utilize the skills of experts who have been sympathetic to their cause. The presence of competent professionals on both sides have led to rational compromise and solutions acceptable to both parties.

As discussed in the two previous chapters, social learning is one of the objectives of public participation in Environmental Impact Assessment. Tilleman (1995:346) argues that, by providing the American public the opportunity to argue

publicly about different environmental goals and objectives, they become empowered to enhance decision making. Moreover, the expression of public communication by discussion and dialogue has merit as a therapy, or a relief valve to give voice to dissension among minorities and to expose differing opinions.

Caldwell (2000:589) concludes that the American people have undertaken the near-total management of the natural environment upon which an artificial environment of human technology has been imposed. Public expectations, many implemented by law, have extended and complicated managerial functions. Hence, public and private organisational management now face responsibilities previously unrecognised. Certainly, this development is of a magnitude and complexity with little historical precedent, and it entails many possibilities for inadvertent error.

7.5.2. Public Participation Techniques in the United States.

As outlined before, some public participation techniques are better than others for communicating with different publics. Canter (1996:600-601) summarises the effectiveness of several public participation techniques, based on results from American water-resources projects :

Table 6 : Effectiveness of different communication techniques on various publics.

Public	Public hearings	Printed brochures	Radio	T.V.	Newspaper	Magazine	Direct mail	Film	Power-Point	Teletecture
Individual citizens	M	L	H	H	H	L	L	M	M	L
Sportsmen groups	M	M	M	M	M	H	H	H	H	M
Environmental groups	M	M	M	M	M	H	H	H	H	M
Farm organisations	M	M	M	M	M	H	H	M	M	M
Property Owners	M	L	H	H	H	L	L	M	M	L
Business-Industrial	L	L	M	M	M	M	H	M	M	L
Professional Organisations	L	L	M	M	M	M	L	H	H	M
Educational Institutions	M	L	L	L	M	M	H	M	M	M

Public	Public hearings	Printed brochures	Radio	T.V.	Newspaper	Magazine	Direct mail	Film	Power-Point	Telelecture
Service clubs/civics	L	L	M	M	M	M	L	H	H	M
Labour Unions	L	L	M	M	M	L	L	M	M	L
State-Local Agencies	H	M	L	L	L	M	H	H	H	H
State-Local Officials	H	M	L	L	L	L	H	H	H	H
Federal Agencies	H	M	L	L	L	L	H	M	M	M
Other groups/organisations	H	M	M	M	M	M	H	H	H	M

H= highly effective; M= moderately effective; L= least effective.

In order to determine the appropriate degree of public participation and the most suitable public participation techniques in the States, Tilleman (1995:437) links the type of project in terms of size and expected impact with the expected public and official interest.

Table 7 shows the Participation Chart, useful for an effective public participation approach by the project proponent.

TYPE OF PROJECT	EXPECTED IMPACT	EXPECTED PUBLIC INTEREST	OFFICIAL INTEREST	PUBLIC PARTICIPATION TECHNIQUE
Small	Potential impact seldom occurs	Limited – generally localised to immediate neighbours	Low	Local survey; press release or informal solicitation of public comment.
Medium	Demonstrated potential impact	May extend beyond immediate neighbours	Low to moderate	As above, plus : extension of surveys and advisory groups; telecommunication; direct mailing.
Large	Impacts require moderate mitigation measures	Potentially widespread – extends beyond the local community	Moderate to high	As above, plus : interagency consultation at all levels of government; expert panels; open houses.
Mega project	Impacts require significant mitigation measures	Widespread – statewide interest, human health or safety issues	High	As above, plus : public hearings; rights to information and cross-examination of applicant.

Understandably, only large and mega projects elicit intensified participation, resulting in higher participation costs because the development stakes are unusually high and local and downstream effects are long-term, many and diverse. (Tilleman,1995:348)

Regarding the cost of public hearings, Tilleman (1995:342) argues that they are enormously expensive. Therefore, these participation costs, incurred in the interests of environmental protection, must always be studied, controlled and balanced against the high costs of delaying a project until the EIA work is complete. In other words, legislators need to reflect this balance by structuring laws and policies which streamline public participation as much as possible while protecting the public interest. Decision makers need to understand that formal public hearings are warranted only when impacts are significant in their potential for affecting public health or inciting substantial public controversy.

As in the previous chapters, a closer look at the mode and frequency of the use of interactive websites as a tool for public participation in environmental decision making is relevant, particularly in the case of the United States. A country breakdown shows that the US is first in most of the examined digital categories worldwide : home PC ownership (107 million), most Internet users (108 million), highest Internet trial (69 per cent), highest Internet knowledge (60 per cent), and highest Internet usage (59 per cent) in the world. (Hazelhurst,2000:18) Slightly more than half, 51 per cent (53.7 million) of all American households have computers and 43 million have access to the Internet in the year 2000. (Feldman,2000:55)

The Environmental Protection Agency (EPA) for instance, provides public access to environmental information via the Internet. Its Centre for Environmental Information and Statistics (CEIS) is committed to make this information accessible to 31 million Americans, even in a Spanish version. (ENN,1999,http://www.enn.com/enn-news-archive/1999/05/050599/theplan_3026.asp)

Web-based technologies present a particularly important opportunity for increasing the effectiveness and efficiency of the NEPA process. The National Information Infrastructure Agenda for Action, issued by the President's Office in 1993, called for government action to complement and enhance efforts of the private sector and assure the growth of an information infrastructure available to citizens at

reasonable cost. It advocated the construction of a seamless web of communications networks, computers, databases, and consumer electronics to put vast amounts of information at users' fingertips by consolidating datasets into one national environmental Web resource, called NEPAnet. Designed as a one-stop shop, it establishes a tool for giving the public better access to NEPA information and the federal agencies a mechanism for coordinating NEPA activities. NEPAnet instantaneously delivers pertinent data on agency proposals to all desired participants in the NEPA process – interest groups, government agencies, Congress, Native American tribes, and citizens worldwide. (Jessee,1998:74)

To round off, Tilleman (1995:342) notes that the participation costs can be a costly burden for proponents and agencies. Therefore, these costs, though incurred in the interests of environmental protection, must always be studied, controlled and balanced against the high costs of delaying a project until the EIA work is complete. Legislators need to reflect this control and balance of public participation costs by structuring laws and policies which streamline involvement as much as possible while protecting the public interest. Decision makers need to understand that formal public hearings are warranted only when impacts are significant in their potential for affecting public health or inciting substantial public controversy. Overall, the goal should always be to have maximum environmental protection at minimum EIA costs.

7.5.3. Environmental Dispute Resolution in the United States.

Environmental Impact Assessment works best when an independent authority is available to oversee the process. Under NEPA, courts provide this through judicial review. (Robinson,1992:594) Much of the strength of the National Environmental Policy Act came from early court rulings in the United States, since NEPA was immediately seen by environmental activists as a significant vehicle for preventing environmental harm. (Glasson et al,1994:28)

These influential lawsuits and court decisions are of three broad types :

- challenging an agency's decision not to prepare an EIA;

- challenging the adequacy of an agency's EIA Report, e.g. raising issues whether the report adequately addressed alternatives; and
- challenging an agency's substantive decision, namely to allow or not to allow a project to proceed in light of the contents of its EIS. (Glasson et al,1994:28)

In the United States, each major procedural step in the EIA process can be challenged in the courts. The fact that such a litigious society as the United States generates less than 100 court cases per annum on NEPA when its provisions are applied to at least 50,000 actions, must be regarded as a vindication of the Regulations. Nevertheless, while the legal provisions are generally regarded as being reasonably unambiguous, the continuing legal actions arguing that EIA's ought to have been prepared, demonstrate the scope they leave for interpretation. (Wood,1995:76)

The early pro-active role of the courts greatly strengthened the power of environmental movements and caused many projects to be stopped or substantially amended. Almost 40 per cent of suits are filed by environmental groups. Yet, the flood of early lawsuits, and the delays and costs involved, was a lesson to other countries in how *not* to set up an EIA system, distancing their systems from the possibility of lawsuits. (Glasson et al,1994:28)

The demand for guidance on Environmental Impact Statement preparation for administrators and technical experts was created by the risk of a court case over an inadequate Environmental Impact Statement, as proven successfully by environmental groups, using litigation to force EIA upon federal agencies. (Wathern,1988:4)

In the United States, the issue of standing or *locus standi* ultimately depends on the 'case or controversy' requirement. This requirement prohibits federal courts from giving advisory opinions; there must be some injury-in-fact, within the zone of interests, or a real adversarial dispute between litigants. This limitation placed upon private parties is intended to prevent the presentation of feigned issues to the court. Parties should have a personal stake in the results demonstrated by suffering some injury, economic or otherwise, usually proven by the nexus test (to live near the site of development). (Tilleman,1995:411)

For organisational complainants, injury-in-fact can be met if individual members are affected by the decision. However, an organisation must specifically allege and prove that its individual members have suffered the injury and would themselves satisfy the requirements of standing, and that the general purpose of the organisation is consistent with the interest the group is pursuing in the suit. In other words, plaintiffs must present concrete facts, showing that the witness is directly affected. In the *Wilderness Society v. Griles* case, it was not sufficient that the Wilderness Society incontrovertibly had a small amount of federal wilderness land in Alaska to use and enjoy for recreational purposes, if they could not prove that any of their members used these precise parcels of land. By contrast, the Animal Protection Institute was found to have standing when it alleged that its members planned to view whales in a certain area 'this summer' which was held to allege sufficiently 'concrete plans'. (Robinson and Dunkley,1995:14-15)

Altogether, American *locus standi* rules are still very broad as they open up the court system to environmentalists. According to Robinson and Dunkley (1995:45), full participation by public interest groups in environmental decision making, is encouraged by the need to exhaust administrative remedies first before resorting to the courts, and by broadened standing in hearings, reflecting the position before the courts.

In conclusion, citizen suit provisions in American courts have significantly contributed to improved environmental protection. They have not, as some feared, opened any floodgate. Instead, they have provided concerned citizens with the means to exercise a credible tool to assist in the environmental compliance process. (Robinson and Dunkley,1995:35)

More than in any other country, alternative means of resolving environmental disputes have been investigated in the USA. Collaborative problem-solving and mediation processes take a different type of effort on the part of agency officials and create an incentive for issue-focused discussion among the different groups, rather than adversarial positioning that leaves little room for pursuing mutually acceptable solutions. (Wondolleck,1985:353)

EPA, for instance, has been exploring alternative means for resolving environmental disputes. Its Superfund Community Relations Office sponsored a pilot

project where professional environmental mediators were sent to three Superfund sites to address and resolve conflicts that had emerged between EPA and communities. Based on these three individual cases, the Superfund Community Relations Office developed some general guidelines on how and when EPA might use this conflict management technique to resolve future environmental disputes. (Bregman and Mackenthun,1992:40)

All in all, environmental mediation is an effective method for settling environmental enforcement disputes. The results of an empirical research of 19 mediated environmental enforcement cases in Florida show that through mediation, 70 per cent of the cases were resolved; participants indicated that they were satisfied with the mediation process, the final agreement and the mediator; and that they saved money by using mediation rather than litigation to resolve their disputes. (Sipe and Stifel,1995:139)

7.6. Formal and Informal Public Participation Opportunities in the Environmental Impact Assessment Process in the United States.

If an American citizen wishes to become informally involved early in the EIA process (to ask for documents, make phone calls, or attend meetings), there is neither a prerequisite nor a statutory test to meet. Such non-legal standing is guaranteed to anyone who wants to make the effort. For more formal participation, one must first check the statutes or regulations to ensure that meetings are open. (Tilleman,1995:407)

The NEPA Regulations state that federal agencies shall involve applicants, other agencies and the public to the extent, practicable in the preparation of the preliminary EIA document. If the agency finds no significant impact, the people who are affected by the proposed action must be notified. (Tilleman,1995:352)

In other words, citizens can provide input on the proposed project in: (1) scoping, a public process to determine the scope of issues to be addressed in an Environmental Impact Statement; (2) the review of the draft EIS; and (3) as a final

resort, the courts. Through these requirements, public participation in environmental planning became institutionalised in the American federal government. (Shepherd and Bowler,1997:726-727)

Every federal agency has adopted procedures to comply with the CEQ Regulations for public participation in the EIA process. The Environmental Protection Agency (EPA) procedures will be utilised in this section because they are typical of those required, they are quite comprehensive and EPA probably does more EISs than any other federal agency.(Bregman and Mackenthun (1992:38) EPA has issued its 'Draft Public Involvement Policy' on the Internet for 120-day public comment. Among the six basic functions for effective public participation in environmental decision making is the identification of the interested and affected public. Recommended actions are :

'the responsible official should develop a contact list for each programme, activity or project, and add to the list those members of the public who request to be added. Each list should be updated frequently, and will be most useful if subdivided by category of interest or geographic area. The nature and intensity of the involvement activities will drive the updating frequency. Proactive efforts should be made to ensure that all points of view are represented on the lists. The contact lists should be used to send announcements of involvement opportunities; notices of meetings, hearings, field trips, and other events; notices of available information, reports and documents; and to identify members of the public who may be considered for advisory group membership and other activities'. (EPA,2000,<http://www.epa.gov/fedrgstr/EPA-GENERAL/2000/December/Day-28/g33157.htm>)

EPA also encourages the development of public participation work plans which specify key decisions that are subject to public participation, staff and budget resources for participation activities, potential affected parties, and a schedule for public participation activities. The work plan should also identify procedures for achieving the public participation objectives of identification of interested parties, outreach, dialogue and feedback. (Bregman and Mackenthun,1992:39)

7.6.1. The Screening Stage.

In the United States, a preliminary study yields a report, with the fundamental issue being to determine whether the anticipated impacts of the action would have a significant effect on the quality of the human environment. Interestingly, significance for environmental quality resources is not only based on institutional and technical recognition, but also on public recognition. This means that some segment of the general public recognises the importance of an environmental quality resource or attribute. Public recognition may take the form of controversy, support, conflict, or opposition and may be expressed formally or informally. (Canter,1996:22)

The decision to proceed to an EIS or to prepare a 'finding of no significant impact' (FONSI) is taken by the lead agency. This public document must succinctly state the reasons for deciding that the action will not have significant effects on the human environment. Many federal agencies are now preparing mitigated FONSI, i.e. reducing all the significant impacts of the proposed action to less than significant levels. Wood (1995:119) claims that these documents are often Environmental Impact Statements in disguise, perhaps to try to avoid public scrutiny and possible delay. Despite the length of this document (about 75 per cent exceed the recommended 15 pages) and their cost (frequently up to US \$ 100,000), the majority of federal agencies do not, in practice, involve the public. This indicates serious shortcomings in the US EIA system.

Shepherd and Bowler (1997:727) go even further and state that a mitigated FONSI is being used as a way to avoid public participation. A project proponent can short-circuit the public participation process by simply including mitigations to reduce impacts, enough to issue a FONSI, and avoiding an Environmental Impact Statement. As a result, the number of EISs has fallen to less than 500 per year (down from over 1000 per year in the 1970s), and the number of mitigated FONSI has skyrocketed.

7.6.2. The Scoping Stage.

The US Council on Environmental Quality (CEQ) calls the discussion of alternatives 'the heart of the Environmental Impact Statement': how an Environmental Impact Assessment addresses alternatives, will determine its relation to the subsequent decision making process. A discussion of alternatives can allow people who were not directly involved in the decision making process to evaluate various aspects of the proposed project and how they were arrived at. (Glasson et al,1994:77)

The CEQ has further issued guidance on scoping which not only advocates the use of public meetings and other methods of ensuring public participation but suggests that a scoping report must be prepared, recording the decisions made during the scoping process, and containing a summary of the issues to be evaluated in the EIS and of the views of those participating in the scoping process. (Wood,1995:134)

At the outset of Environmental Impact Statement preparation, which is identified by the Regulations as an early, open process for determining the issues, the scoping must be undertaken to notify all agencies and concerned individuals about the proposal. As part of the scoping process, the lead agency, which has the discretion to hold early scoping meetings, must invite the participation of all agencies (federal, state and local), any affected Indian tribe, the proponent and any other interested person (including environmental opponents). Notice may be given by any federal agency for such participation. (Tilleman,1995:363)

Under NEPA Regulations, the sponsoring federal agency is required to have meetings involving all parties directly affected or interested in the proposed project. At these sessions, the participants are encouraged to present their concerns about the project and an attempt is made to define the priorities in these perceived problems. (Beanlands,1988:37)

7.6.3. The Reporting Stage.

The preparation of the Environmental Impact Statement document allows the public a real opportunity to become involved within the EIA process through allowing

several parties to comment on the document; the agencies' address and response to the comments; and through public hearings. The most formalised public form of input, is often necessary whenever issues of environmental significance arise. (Tilleman,1995:352)

After the draft Environmental Impact Statement is prepared, the federal agency must request comments from any federal agency (with special expertise), state and local agencies, Indian tribes (for environmental effects on reservations), the applicant, and the public. For public comments, solicitations must be affirmatively made of those persons or organisations who may be interested or affected. Agencies must circulate the draft and final EIS to the applicant and any persons or agencies requesting the entire EIS. An agency finally responds to comments by modifying or re-examining the alternatives, making corrections were needed, or explaining why further agency responses are not needed. (Tilleman,1995:364)

7.6.4. The EIS Review and Decision Making Stage.

The formal review of EIA reports is handled differently in different EIA systems. In the US model, the draft EIS is used as the basis for consultation and participation and is duly succeeded by a final EIS. The power to require a supplementary EIS also exists. The Environmental Protection Agency reviews all EISs and publishes its opinions about both the adequacy of the EIS and the environmental impact of the proposed action using a rather general set of criteria. This 'EIA-report/review/further EIA-report' pattern, where the comments by consultees and the public are published as part of the review process, are non-existent in EIA systems in the United Kingdom and South Africa. (Wood,1995:161)

Wondolleck (1985:342) argues that, from a strategic perspective, there is no opportunity for the affected groups and individuals to see how their comments affected final decision making. Instead, the agency is put in a position of second guessing their constituents' statements, weighing and balancing these statements, and then announcing their decision. Meanwhile, the decision makers keep their fingers crossed that the many groups will see the logic in their allocations, the reasoning behind the tradeoffs made, and laud their efforts.

The result however, is often widespread dissatisfaction with both the Environmental Impact Assessment and decision making processes. And, because the stakes are frequently high, the adversely affected interests may take every opportunity to overturn, stall and/or judicially test the decision made. (Wondolleck,1985:342)

Therefore, Jain et al (1993:235) advocate for access to the decision process by community members, the general public and officeholders. Allowing or encouraging community involvement in problem identification and discussion, without influence on the ultimate decision, is not an answer to the problem - rather, it becomes a charade. The input provided by the citizenry should result in a course of action, consistent with their desires and with the needs of their fellow community members. The agency must therefore have the power to act on behalf of the citizens, and the decision must reflect the joint objectives of the agency and the community.

According to Tillman (1995:427), the public should lobby for the legal right to participate before irreversible decisions are made, in the case where no EIA laws exist.

Yet, it is important to note, that lobbying does not always happen as a supporting tool for better protection of the environment. Every year, polluting industries and their lobbyists donate millions of dollars to politicians' re-election campaigns. As a result, polluters have far more access to political decision makers -- and far more influence over environmental decisions - than ordinary citizens do. (Environmental Working Group, 2001,<http://www.ewg.org/dirtymoney/home.html>)

7.6.5. The Follow Up Stage.

Monitoring is essentially discretionary in the American EIA system. As the Regulations state : agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. The Regulations require some implementation monitoring, since they specify that the lead agency must, upon request, inform other agencies on progress in carrying out certain mitigation measures adopted. Further, it must - again upon request - make available to the public the results of relevant monitoring. In practice, despite these requirements, monitoring is generally perceived as a weak link in the US EIA system. It is not given high priority

and some monitoring commitments are not honoured because of budgetary constraints or communication lapses. (Wood,1995:202) In the NEPA-practitioners' survey of Canter and Clark (1997:318), two major statements of concern reveal that :

- post project monitoring for mitigation and evaluation is rarely conducted; and
- proposed mitigation measures are often not implemented due to the lack of guidelines and action encouraging follow-up.

Yet, a number of federal reviews of the operation of the whole EIA system or of parts of the EIA system have been carried out in the United States. In addition, federal agencies have conducted reviews of their own NEPA procedures and fed lessons from specific EIAs (perhaps as a result of court cases) back into their systems. These reviews have generally involved extensive consultation. (Wood,1995:244)

7.7. Conclusion.

This chapter has examined public participation in Environmental Impact Assessment in the United States. First, the appropriate legislative framework as a legal basis for public participation was reviewed, indicating that the NEPA legislation is a secure legal basis for public participation. Second, the institutional set-up in the U.S. was highlighted, examining relevant competencies, the role of the civil service and their capacities and/or impediments to implement the EIA legislation. The core part of this chapter reviewed 'the public' as stakeholders : what is the nature of the public, which public participation techniques are commonly employed and how can the public resolve environmental disputes successfully ? Finally, formal and informal public participation at the various stages of the EIA process were explored, coming up with a meaningful picture of the way how the public participates effectively in the American environmental decision making process.

It is clear that the role of public participation in the success of the US National Environmental Policy Act in influencing decisions on actions owes much to two factors: the first is the right to participate and to gain access to relevant

documentation, including that relating to participation; the second is the public right of appeal to the courts over EIA decisions.

Even though NEPA imposes essentially procedural requirements on project proponents, substantive public participation that goes beyond the requirements, has benefited the parties involved and the final outcome of participatory environmental decision making. Moreover, one could claim that the reform enacted by NEPA, has so far stopped the worst environmental abuses in the United States. Indeed, it would be unthinkable today to embark on a major infrastructure project without careful consideration of its social, economic and environmental costs. Yet, it remains to be seen whether the progress made during more than three decades will stand the test of an American anti-environment administration, threatening the whole notion of sustainable development. The public as watchdog will become even more critical to the continuation or failure of the fit between the works of humans and nature. It is up to the American voters now to let their voices heard and send a clear message to the decision makers at Capitol Hill : ‘we will not be left out of the decision making process’ !

Chapter 8 : Evaluation and Conclusion.

8.1. Introduction.

The last chapter of this thesis draws the main threads of the earlier chapters – examining the British, South African and American contexts - together by summarising the performance of each of the three EIA systems in relation to their public participation opportunities against the evaluation criteria or indicators, and discussing their shortcomings. Indeed, analysis across Environmental Impact Assessment systems provides a means of better understanding public participation practice in any particular jurisdiction. Main issues arising after scrutinising the findings in chapters 5, 6 and 7, are discussed and provide significant variations in each system. Finally, the comparative analysis would be incomplete without the creation of country profiles, followed by valuable insights into remedies and/or pointers to others.

8.2. Main Issues arising from the Comparative Analysis.

In undertaking the country studies, use was made of the structure and logic of an analytical framework, exploring four main clusters of factors, as explained in chapter 4. The next section offers a brief comparison of the outcomes as a result of examination of the evaluation criteria as analysed in the previous chapters, with an emphasis on significant variations in consultation and participation between the three countries. Based on the country-specific findings in chapter 5, 6 and 7, some main issues are arising, as explained in the following tables :

1) Appropriate Legislative Framework :

Indicators	UK	South Africa	US
Legal provisions mandatory/ discretionary?	Regulations specifically implement European Directive on EIA, integrated within town and country planning system.	Mandatory EIA's with compulsory public participation under EIA - Regulations and National Environmental Management Act.	National Environmental Policy Act and Regulations clearly define separate EIA system.
Legal secure basis?	Yes, since 1985.	Yes, since 1997.	Yes, since 1969.

2) Institutional Framework :

Indicators	UK	South Africa	US
Who are the relevant competencies ?	Administered by Local Planning Authorities under supervision of Department of Environment.	Provincial environmental departments or nature conservation authorities.	Federal authority Environmental Protection Agency (EPA) in co-operation with state agencies.
What are their capacities and/or impediments ?	Acting as judge and jury. Variable expertise; limited by lack of resources.	Regulations are not consistently applied. Limited by lack of human and financial resources. Transparency is critical.	Tripartite checks and balances. Results-centered public management. Civil servants' expertise generally high.

3) The Public :

Indicators	UK	South Africa	US
What is the rationale for public participation by the public ?	Instrumental participation by self-interested individuals, checking on authorities.	Instrumental participation by self-interested individuals, checking on authorities.	Instrumental participation by self-interested individuals, checking on authorities.
What are the attitudes and capacities of the public ?	Low level of interest, NIMBY attitude; apathy by majority of the population. Still concern for environment.	Public is ignorant and diverse. Have-not's are underrepresented. Low priority for environment by general public. Low capacity (social exclusion) for public participation.	NIMBY attitude by public. Still concern for environment. High interest and priority by environmental interest groups.
Which public participation techniques are used?	Public hearings, public opinion surveys, consensus conferences, citizen's panels, citizen committees, focus	Public meetings, telephone lines, exhibits/displays, newspaper ads, written information, surveys, interviews, questionnaires,	Public hearings, brochures, mass media (TV, radio, newspapers), direct mail, magazines, interviews,

	groups. Interactive website is evolving rapidly.	open house, workshops, advisory groups. Strong digital divide.	questionnaires, workshops, citizen's panels. Interactive websites very important.
Does the public have access to justice as a tool for dispute resolution ?	No third party appeal, unless judicial review in Court. Locus standi is narrow - only when greater interest than for other members of the public. Narrow interpretation by the courts; 'letter of the law'.	Provision for appeal by applicant, interested party or members of the public. Locus standi is broad – to anyone acting in public interest and the inclusion of associations.	Provision for appeal by applicant, interested party or members of the public. Pro-active 'spirit of the law' approach by courts in litigious society. Broad locus standi rules as tool for compliance.

4) Formal and Informal Public Participation Opportunities in the EIA process :

Indicators	UK	South Africa	US
Do the public have formal and informal channels to participate in the screening stage ?	No formal participation opportunities. Rare informal involvement.	Access to information on voluntary basis. Rare public participation.	Public scrutiny is avoided at this stage. Majority of agencies do not involve the public.
Do the public have formal and informal channels to participate in the scoping stage ?	Not a statutory requirement but strongly advised. Frequently takes place but practice varies.	Preparation of scoping report is mandatory. Proponent (not authorities) are in charge of participation programme.	Public scoping is mandatory and used to produce specific guidelines for EISs.
Do the public have formal and informal channels to participate in the reporting stage ?	No formal requirement for proponent to consult or for checks on EIS prior to release.	Mandatory in the final EIA report.	Draft EISs are subject to formal checks on required contents prior to publication.
Do the public have formal and informal channels to participate in the reviewing and decision making stage ?	LPA may request further information and proponents usually provide it, but no duty to respond to the comments.	Formal provisions for reviewing the EIA Report, though little influence on decision making by the public.	Lead agency must respond to agency and public comments on published draft EIS and final EIS. Environmental pressure groups important.
Do the public have formal and informal channels to participate in the follow up stage ?	No formal general requirement to monitor, but some records published. EIA system review undertaken, and changes made to improve operation.	No formal or informal adequate public participation opportunities.	Council for Environmental Quality charged with general oversight of EIA implementation. Numerous reviews undertaken and amendments made.

8.3. Country Profiles.

As a consequence of the findings reflected in the analysis above, three country profiles are created, emphasising the strengths, weaknesses, opportunities and threats for public participation in each Environmental Impact Assessment system.

8.3.1. The United Kingdom.

The Environmental Impact Assessment system in the United Kingdom is a first generation EIA system with screening, environmental statement publication and public participation provisions integrated into existing town and country planning decision making processes, but without scoping, early participation, third party appeal or monitoring provisions. These shortcomings are a reflection of the UK's implementation almost to the letter of the rudimentary compromise requirements of the European Directive.

As a matter of fact, the discretionary nature of the EC Directive accommodates for the British legal and administrative system into which the EIA procedure must be inserted. However, the Directive clearly delineates most of the differing stages of the procedure, but only requires the use of some public participation opportunities. In all, the public are assigned to be informed, to be consulted and to be taken into consideration. Basically, the level of power assigned to the public in the EIA procedure in the UK is the minimum expected and required by the EC Directive; provisions above those Directive requirements tend to take on its discretionary nature.

An often heard criticism being levelled in the United Kingdom, is that public participation comes a step too late. Although scoping is an important step in the EIA process, it is not legally mandated in the UK. Yet, consultation with affected and interested parties at this early stage can help not only with data but also with the identification of those key environmental issues for which data should be collected. This lack of early discussion is one of the major limitations to effective Environmental Impact Assessment to date.

Still, there have been recent moves towards greater public participation in environmental decision making in the UK. Despite these positive trends, few developers make a real effort to gain a sense of the public's views before presenting their planning applications and EISs to local authorities. Moreover, few local authorities have the time or resources to gauge public opinion adequately before making their decisions.

If weaknesses in the UK system due to restricting legislative, institutional and practitioner barriers continue to be evident, as practice evolves, then changes more radical than the current provisions will be necessary, in order to untap the full potential of public participation in EIA in the UK. A new pro-active approach from both the British authorities and the general public should emerge, so that public participation becomes a substantive process rather than a procedural exercise.

8.3.2. South Africa.

South Africa, with its history of apartheid, has been particularly slow to create opportunities and implement procedures for public participation in the field of environmental planning and decision making. The trend towards participatory democracy in South Africa underpins the values and advantages of public participation. Moreover, the recent legislation for compulsory EIA may be regarded as a very significant step in formalising EIA and should lead to a secure starting point to ensure effective public participation. The fact that the public is mandated to participate at the early stages of the EIA process is an achievement.

However, the legislation seems to be fragmented and uncoordinated, further weakening the already insufficient institutional capacity at the provincial and local spheres of government. Also, the impression rises that the provisions for public participation mechanisms may favour those with the incentive and resources to participate. It remains to be seen whether the public is representative and inclusive. Channels of interaction between proponents and the interested and affected parties should be revised critically in terms of representation and equality, relevant to the specific context of the EIA target area. It is equally important to realise that other, more appropriate participatory strategies and public participation techniques need to

be employed in a developing country like South Africa, in order to gain an understanding of indigenous environmental knowledge, so that poorer South African communities can get involved as well.

Furthermore, the extensive provisions for public participation during the scoping and EIA Reporting phases do not match with the limited rights to scrutinise the implementation of the EIA recommendations and decisions during the follow up stage. Adequate monitoring is hampered by the fragmentation of EIA responsibilities, the understaffing of relevant authorities and the unaccountable bureaucratic culture in South Africa.

Another major concern in the South African context is the objectivity of EIAs because the consultants responsible for the EIA are paid by the developer, unlike the case in the UK and the States. Interested and affected parties are worried that consultants are not always impartial in evaluating scientific data gathered in the investigation.

8.3.3. The United States.

Public participation is the driving force in the evolution of Environmental Impact Assessment in the United States. The National Environmental Policy Act (NEPA) requires that both relevant federal agencies and the public be consulted during the preparation of the Environmental Impact Statement. Furthermore, the Council on Environmental Quality Regulations makes provision for agency consultation and public participation in all the stages of the EIA process throughout the project cycle.

It is clear that the role of public participation in the success of NEPA in influencing decisions on actions owes much to two factors: the first is the right to participate and to gain access to relevant documentation, including that relating to participation; the second is the public right of appeal to the courts over EIA decisions.

It is recommendable that a country like the United States, with well developed Environmental Impact Assessment laws and extensive public participation programmes, is sharing its expertise and vision, gained during more than three

decades, with the rest of the world. The American EIA laws provide the regulatory framework to mandate public participation in the planning of major projects. They provide public notice of the project, involve the public in a scrutiny of EIA procedures, provide for public meetings and hearings, establish sources of information regarding the laws and the proposal, and mandate the repository of EIA documentation in places convenient for the public to review.

The new paradigm of New Public Management, which originated in the United States, should further spread its influence worldwide, by illuminating the role of empowered communities, hence shifting from traditional, bureaucratic and rules-oriented approach to a results-centered model. Also, the growing interest in sustainable development calls for the integration of environmental and developmental objectives, supported by power sharing mechanisms at grassroot levels.

8.4. Observations and Recommendations.

Based on the three country profiles, observations and broad recommendations are formulated in order to improve the effectiveness of public participation in Environmental Impact Assessment processes:

- In order to encourage EIA-culture, best-practice guidelines should be developed, guiding developers, administrators and citizens. Manuals for the practical application of EIA in plan making are required as well as training programmes for civil servants. Also, courts should give a broader interpretation of the duties of competent authorities under the EIA regulations, in particular in the United Kingdom.
- An independent EIA institute, that focuses on collating skills and supports all the actors involved in EIA, could be established. Increasing the standard of practice can be enhanced through emphasis on guidance, training and research, applicable across EIA-systems.
- The public should be more informed about the empowering opportunities for public involvement since the final responsibility for effective

participation falls on the public, including the fundamental recognition by the public that, through EIA, they have the opportunity to define how they want their environment and not only oppose, and the public's use of existing rights to participate.

- Assistance should be rendered to the public in the formulation of comments that are too technical and scientific in nature as well as provisions that foresee that the non-technical summary is published separately.
- The level of power assigned to the public in the EIA procedure is often restricted to the minimum expected and required by EIA laws; the public are informed, consulted, and their opinions are taken into consideration. This reflects the findings of Arnstein whereby the lower rungs of an empty ritual of public participation overrule the higher rungs of real power needed to affect the decision.
- Significant roadblocks to achieving genuine levels of participation include resistance to power redistribution on the institutional side and resource inadequacies and distrust on the public's side.
- Genuine public participation can also be obtained by sufficient access to justice. Where *locus standi* rules are provided broadly, as is the case in South Africa and the United States, interest groups and private citizens may find court rulings a significant vehicle for preventing environmental harm.
- An effort should be made to move the instrumental participation rationale for public participation more into the area of deliberative democracy. In other words, emphasis should be placed on the creation of institutional context and practices which promote open dialogue and knowledge sharing, whereby the active involvement of a wide range of participants is fundamental.
- Various communication techniques have been developed to make the role of public participation in the planning process more effective, yet, there is need for further exploration of the various public participation techniques presently available. South Africa needs special attention, since the

majority of the public is still excluded from the mass media and advanced techniques like interactive website.

- Newer conflict resolution techniques may be useful in trying to avoid the use of litigation and arbitration. Mediation and negotiation have become more and more effective in the United States and should be suggested more often in the UK and South Africa in order to reach consensus between conflicting partners. Formalising this approach offers an alternative to a public hearing-based panel review.
- Special efforts are needed to facilitate public participation for traditional communities in remote areas where widely used techniques are inappropriate as means of gaining public input. Environmental workshops at grassroot level or participatory rural appraisals (PRA's) may serve as more effective alternatives.
- Public awareness should further be promoted by environmental pressure groups, serving as a watchdog, since they are increasingly the mechanism of choice for individuals and organisations to make their voices heard on public policy issues. The way American environmental interest groups are lobbying successfully for environmental issues deserves closer attention by other stakeholders worldwide.
- The stages in the planning process in which public participation occurs – both in terms of form and time allowed for it - is critically important in the effectiveness of an EIA system.
- Formal and mandatory public participation opportunities should be established during the scoping stage, giving an opportunity for all the affected public to be represented, as done in South Africa and the United States. By an amendment of the British law, scoping could become mandatory.
- Also, it is essential that a two-way communication process is implemented during the EIS review phase. The present system in the UK results in the public sending their comments only to comply with the formal requirements, thus promoting litigation. Transferring the conflicts to a post-decision litigation cannot be classified as an effective EIA system.

- The focus on pre-decision stages of EIA and the neglect of post-decision stages severely constraints the maturation of the EIA systems, particularly in the UK and South Africa, where monitoring is weak or non-existent. Post-auditing contributes to a trial-and-error approach, whereby the public can voice their concerns.

8.5. Conclusion.

The last chapter of this thesis has drawn together the main threads of the British, South African and American chapters, by summarising the performance of each of the three EIA-systems in relation to their public participation opportunities.

The structure and logic of an analytical framework was useful to reveal significant variations within and between the countries. Apparently, the three systems seem to possess more or less mature, well-defined and formal Environmental Impact Assessment systems, with the oldest one, the American system, serving as an example to others, as far as the level and degree of public participation and techniques is concerned. Moreover, in these mature systems, EIA demonstrably affects the decision making process, whereby project mitigation and modification are the norm.

This thesis has compared the role of public participation in the Environmental Impact Assessment process in the United Kingdom, South Africa and the United States. Public participation deserves attention because the degree of participation affects the quality of the environmental impact analysis process, which, in turn, affects the quality of the decision about a project. Broader participation creates more information and alternatives to be presented to decision makers, enhancing the opportunity to mesh public values and government policy.

Public participation may slow down the Environmental Impact Assessment process, but the real goal of Environmental Impact Assessment is to ensure sustainable development, no matter how long the EIA process takes. In spite of delay and cost dilemmas, the arguments for participation outweigh the risks and costs endemic to such participation. It is important that environmental concerns be

identified and evaluated, and that alternatives be fully explored at the earliest stages of project planning. EIA legislation should not be operated after projects are already completed; in fact, EIA laws are only consistent with sustainable development as long as these laws operate to force proper considerations of environmental impacts into the decision making process.

All in all, public participation has a high probability of success since it provides a better information base, creates a sense of ownership, trust and control amongst those affected by the proposal, promotes perceptions of equity, legitimises the decision making process and encourages accountability. Moreover, public participation has the potential to enhance the maintenance of accountability in public and private sectors. The public should realise that they, individually or through interest groups, can participate in public matters that affect them, with a view to persuading decision makers and shaping environmental policies.

Having compared three EIA systems and their public participation component, it can be seen that they do not perform equally well, and that certain shortcomings become more evident when they are seen overall, rather than partially. Overall, the United States has gained most of the long term experience of involving the public in Environmental Impact Assessments, thanks to a comprehensive and substantial legal and institutional framework and a highly emancipated and literate population. South Africa on the other hand is trying hard to catch up with public participation principles and practices, despite the fact that the nation has only recently embarked on a participatory democracy. Maybe another decade is needed to judge whether the spirit and purpose of Environmental Impact Assessment in general and public participation in the South African EIA system in particular can stand the test of time. Lastly, the United Kingdom can be considered as having the most reactive EIA system of the comparative analysis, since public participation in Environmental Impact Assessment is often reduced to a procedural exercise, only complying with the minimum requirements, instead of a substantive process to include the public in environmental decision making.

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Appendix I : Contrasting perspectives on Environmental Impact Assessment : some hypothetical examples.¹

- An **environmental scientist** might define EIA as a process to predict likely change in the biophysical environment (e.g. fish populations, air quality, etc.) in order to allow for the redesign of the proposal and appropriate mitigation measures. This view focuses on the technical aspects of EIA, either for the benefit of the proponent in meeting environmental requirements and reducing costs during later operations, or to establish monitoring needs for regulatory agencies.
- A **sociologist** might define EIA as a process of informing local communities about possible changes in their circumstances, and in their immediate environment, and therefore allowing those people to participate in the decision-making process more effectively. This view is very much community-centred, and seeks to give local people more say in the development of local resources, and managing the effects of such development. This image of EIA, as a social tool, is reflected in much of the literature on Social Impact Assessment.
- A **member of the local community** might view EIA as a way the council and their developer friends can justify going ahead with a development, whether the local people want it or not. This view sees EIA as a tool for legitimising development.
- A **political scientist** might define EIA as a process that forces bureaucracies to recognise and respond to national and international concerns about environmental change. This view emphasises the need to influence public policy processes, at the national as well as local level, with EIA as a forcing mechanism to pressure bureaucracies into changing their internal information-gathering and policy-development priorities and procedures.
- A **politician** might view EIA as a process that demonstrates that decision-making now recognises environmental issues and thereby satisfies the desires of the electorate. This view can be taken to the cynical extreme that as long as the procedure is present, it does not have to work !
- A **developer** might define EIA as a process whereby local authorities can employ more staff at the developer's expense, on the politically expedient excuse of protecting the environment. This would be the view of those proponents who see EIA as a barrier to their development activities, incurring unnecessary delays and costs, and to be carried out largely to pander to special interest groups.
- A **'deep' ecologist** might define EIA as cynical ploy by government and developers, and people sympathetic to the aims of economic growth, to maintain the long-term policy of resource development and growth, while appearing to show some concern for the environment. This view sees EIA as

¹ Source : Morgan, 1998:21

an accommodation to the prevailing growth ethic, and therefore hostile to the long-term protection of the environment and its values.

- A **planner** might see EIA as a practical process for balancing the needs of development with the need to maintain important environmental and social characteristics of a locality. Or they might view it as providing a channel for unnecessary public intrusion into their management of the development control process. Both of these views are associated with the idea of planners as technocrats, acting on behalf of society, and, depending on its form, EIA can either be a technocratic tool or it can conflict with the technocratic approach.
- An **economist** might define EIA as a process for identifying externalities associated with a proposal, and bringing them into a framework in which they can be assigned monetary values to allow clearer and more rational decision-making. This view emphasises rational decision-making as the area needing improvement, and sees EIA assisting in this.

Appendix II : Environmental concerns of developing and industrialised countries.

Note : The issues pointed out in capital letters are considered to be of particular significance.

Environmental concerns	Developing countries	Industrialised countries
1) <u>Natural environment :</u>		
- Air	Air pollution in major cities	AIR POLLUTION
- Land, soil, mineral resources (incl. energy)	SOIL EROSION AND DEGRADATION; DESERTIFICATION	Soil loss and deterioration; dumping of waste; risk of radioactive contamination from nuclear-power production
- Water	FRESHWATER SHORTAGE; freshwater pollution; pollution of coastal waters	Freshwater shortage; INLAND AND MARINE WATER POLLUTION
- Fauna and flora	DEFORESTATION (tropical forests); loss of genetic resources; endangered species	Loss of genetic resources; endangered species
- Ecosystems	Pollution of coastal ecosystems (decreasing fish catch)	Disruption of mountain, wetland, freshwater (esp. FOREST DAMAGE from acid rains) and coastal ecosystems
- Natural disasters	FLOODS; DROUGHTS; STORMS; EARTHQUAKES; volcanic eruptions	Floods; earthquakes
2) <u>Man-made environment and living conditions :</u>		
- bioproductive systems	LOSS AND DEGRADATION OF ARABLE LAND;	Loss of croplands to urban sprawl; pests and pest

	pests and pest resistance; water shortage, pressure on fish population; IMPACTS OF FUELWOOD CONSUMPTION; food contamination, post-harvest losses	resistance; contamination of crops and fish; over-exploitation of fishing grounds. ¹
- Human settlements	MARGINAL SETTLEMENTS (RURAL-URBAN MIGRATION, URBAN GROWTH)	URBAN SPRAWL; NOISE; LAND CONTAMINATION; TRAFFIC CONGESTION
- Health	MAL- AND UNDERNUTRITION; INFECTIOUS AND PARASITIC DISEASES	CANCER; cardiovascular diseases; genetic and long-term effects of POTENTIALLY TOXIC CHEMICALS and HAZARDOUS WASTE
- Environment and Development	SUSTAINABLE DEVELOPMENT	ENVIRONMENTAL EXTERNALITIES; energy and environment
<hr/>		
3) <u>Global problems</u> :	global warming and consequential effects	CLIMATE CHANGE; depletion of the OZONE LAYER

¹ BSE-EPIDEMY / FOOT AND MOUTH DISEASE should be added (comment from author)

Appendix III : Problems in Environmental Impact Assessments, caused by poor scoping or by lack of scoping; and the benefits of the early use of scoping in Environmental Impact Assessments. ⁱ

Problems in EIA, caused by poor scoping or by a lack of scoping :

- Documentation is too voluminous and unnecessarily comprehensive, causing more effort than necessary for the proposer, and making analysis needlessly difficult for everyone else;
- key issues are not identified as such, nor singled out for special attention, resulting in poorly focused analysis;
- irrelevant or minor issues are not eliminated early enough, causing needless effort and diverting attention from more important matters;
- major issues are missed until it is too late in the process, resulting in delays while new information is obtained and presented;
- often organisation of environmental effects assessment is according to a standard technical format and not issue-oriented, making analysis difficult for both public and decision makers;
- issue identification, discussion of alternative, and process decisions are taken out of sight of the public and concerned agencies, which leads to mistrust and antagonism, making later consensus building difficult;
- little attention is paid to defining boundaries of the potentially affected area and the time frames for ecological study, resulting in misunderstanding and either wasted or insufficient effort;
- traditional...spiritual values have not been readily incorporated into the decision process, resulting in culturally insensitive decisions, and, in some instances, costly corrective measures;
- open, focused debate about the importance of potential impacts is often clouded by last minute scientific debate about which 'facts' or methods are valid, resulting in costly re-examinations; or there is no opportunity to question the science, often resulting in technically bad decisions in spite of good intentions.

The benefits of the early use of scoping in Environmental Impact Assessment :

- A focus on the real issues is provided at an early stage;
- allows for environmentally sensitive planning and early resolution of some issues;
- exposes road blocks early, so as to enable unacceptable proposals to be abandoned before major expenses are incurred;

- reduces paperwork through early, thoughtful, open, explicit inclusion and exclusion of issues for further consideration;
- reduces time and effort wasted on unimportant issues;
- reduces likelihood of overlooking issues and having to redo the environmental effects assessment;
- encourages rapid conflict resolution, as participants not taking advantage of the early opportunity will not be heard so sympathetically later on;
- reduces the likelihood of formal objections at later hearing stages;
- all participants focus on the same issues, making efficient use of resources;
- eliminates from detailed consideration matters not seen as important in the circumstances;
- develops study designs that are scientifically valid (and accepted by all parties as such);
- defines impact area boundaries and time horizons;
- determines level of detail required to address the issues;
- identify future steps in decision.

ⁱ Source : South African Department of Environment Affairs, 1992:30-31.

Appendix IV : Institutional Complexity – Examples of Institutions and Instruments affecting Environmental Resource and Energy Management in the UK.

(Source : Stead and Nadin,1999:353)

LEVELS	EXAMPLES OF INSTITUTIONS	EXAMPLES OF INSTRUMENTS					
		AIR	WATER	BIODIVERSITY	WASTE AND MINERALS	ENERGY	LAND/LANDSCAPE AND URBAN
Global	UN Commission on Environment and Development International Energy Agency	1972 Stockholm Declaration on the Human Environment 1992 Declaration on Environment and Development 1992 Framework Convention on Climate Change					
		1987 Montreal Protocol on the Ozone Layer	1992 Convention on Law of the Sea	1992 Convention on Biological Diversity	1992 Basle Convention	1992 International Energy Programme	Global Forest Convention
European	European Union European Environment Agency Council of Europe	EU Fifth Environmental Action Programme : Towards Sustainability					
		Air Quality Framework Directive	Water, Bathing and Urban Waste Water Directives	Habitats Directive Biodiversity Strategy	Waste and Landfill Directives Strategy for Waste Management	European Energy Charter Treaty EU Action Programme on Energy Use	Europe 2000+ European Spatial Development Perspective
United Kingdom	UK Parliament Cabinet Standing Committee on Environmental Policies Select Committees on Sust. Development and Energy Royal Commission on	National Air Quality Strategy	Water Resources and Supply : Agenda for Action	UK Biodiversity Action Plan	Strategy for Sustainable Waste Management	Climate Change : the UK Programme Non-Fossil Fuel Obligation	

	Environmental Pollution Government Panel on Sustainable Development Joint Nature Conservation Committee						
Countries and regions of the UK	Secretaries of State, Departments of Environment, Transport and the Regions; Trade and Industry Scotland, Wales and N. Ireland Ministry of Agriculture Integrated Regional Offices of Government in England Scottish Environmental Protection Agency Countryside Commission Countryside Council for Wales Scottish Natural Heritage English Nature Forest Authority Forest Enterprise	Air Quality Standards Integrated Pollution Control Regional Sustainability Action Plans	Water Protection Zones Nitrate Sensitive Areas	Nature Conservation Orders	Minerals Planning Guidance Notes		Planning Policy Guidance Regional Planning Guidance Notes (England) Areas of Outstanding Natural Beauty
Local Authorities	Local Agenda 21						
		Local Air Pollution Control Air Quality Management Plans		Local Biodiversity Action Plans (non-statutory)	Minerals and Waste Plans Waste Management Plans	Energy Conservation Reports Local Transport Plans	Structure Plans Local Plans Unitary Development Plans

Appendix V : Environmental Policy of relevance to Environmental Impact Assessment in South Africa since 1982.

DATE	POLICY/LEGISLATION	COMMENT
1982	Environment Conservation Act	Had limited scope, established Council for the Environment, contained provisions relating to natural areas.
1989	Environment Conservation Act (amended)	More comprehensive, but specifically no requirements for EIA's.
1989	Integrated Environmental Management (IEM) process	This introduced the IEM procedures. Compliance voluntary. Council for the Environment, 1989.
1992	The Integrated Environmental Management (IEM) procedure	Formal IEM process guidelines in 6 volumes. Compliance still voluntary, but gaining increasing credibility. Department of Environment Affairs, 1992.
1992	Minerals and Mining Act	Introduced Environmental Management Programmes for mining industry. Compliance voluntary but gaining credibility within the industry.
1995	Consultative National Environmental Policy Process (CONNEPP)	Purpose : to develop a new Environmental Policy for South Africa. Emphasis on integrated framework, forms the basis for strategies, action plans and new framework for legislation through which the policy can be implemented.
1996	White Paper on Sustainable Forest Development in South Africa.	Key implications on forestry, in that under the Afforestation Permit System, EIA's may be required. April 1996.
1997	White Paper on a National Water Policy for South Africa	Key implications for EIA's in terms of a new water resources use and management philosophy of both public good and sustainability.
1997	White Paper on Environmental Management Policy for South Africa	More comprehensive than the Environmental Conservation Act of 1992, but still lacking in key areas.
1997	White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity	Policy pertaining to the use, management and preservation of genetic, species, ecosystem and landscape diversity. Key implications for EIA's.
1997	EIA Regulations	Making EIA's mandatory for the first time in South Africa.
1998	Discussion Document : A National Strategy for Integrated Environmental Management in South Africa	Major deficiency of the 1992 IEM procedure is a focus on discrete events. Most environmental impacts result from activities other than individual project level developments. Aimed at promoting legislation of integrated management approaches.

Jan 1999	National Environmental Management Act	Seeks to promote co-operative governance among different levels of government involved in environmental management. Allows for enforcement of environmental laws by the public. Introduces need for environmental considerations at the policy level
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(Source : Weaver,Hounscome and Ramasar,1999:3-4)

Appendix VI : The Public Participation Process during the Rietvlei EIA.

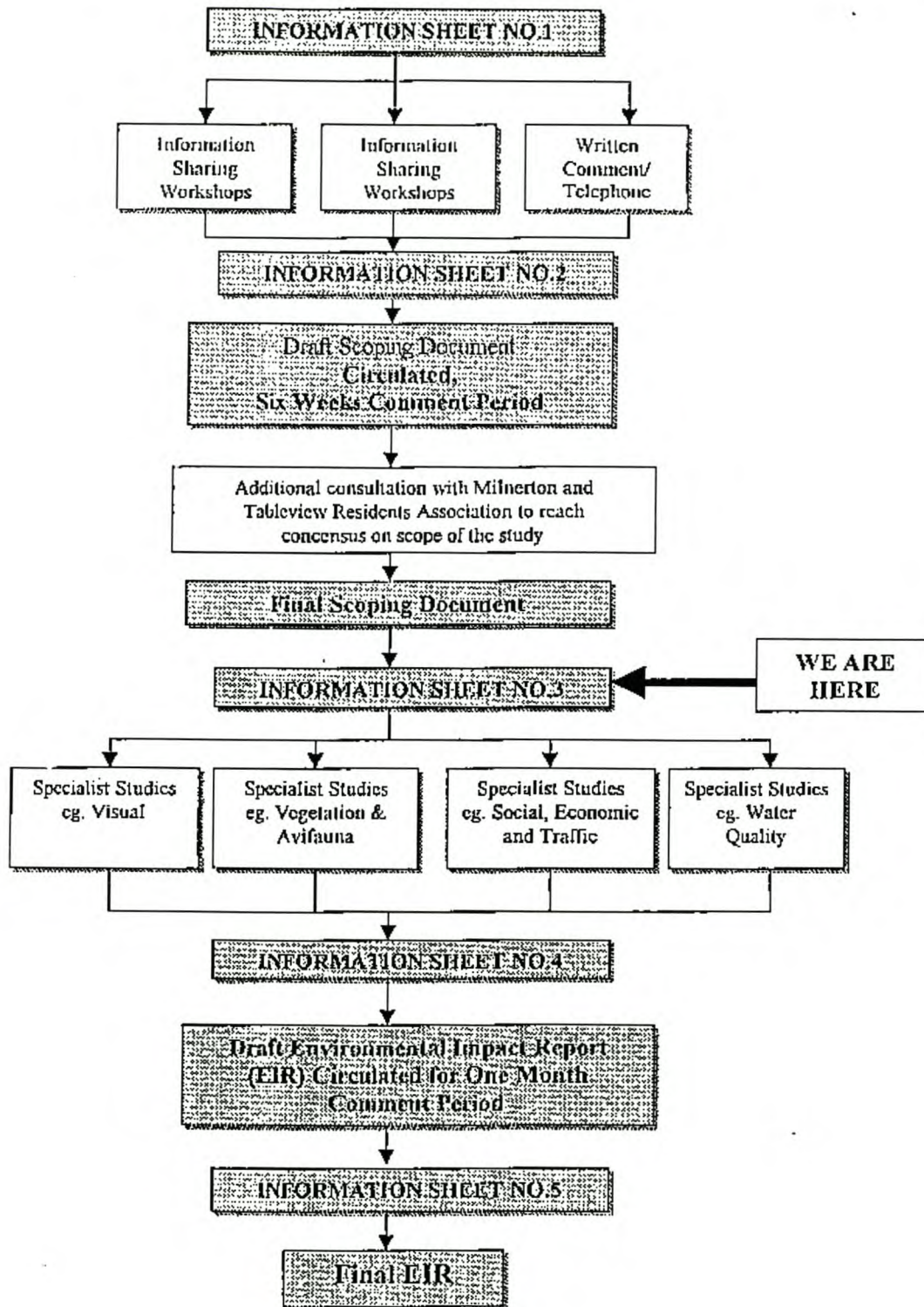
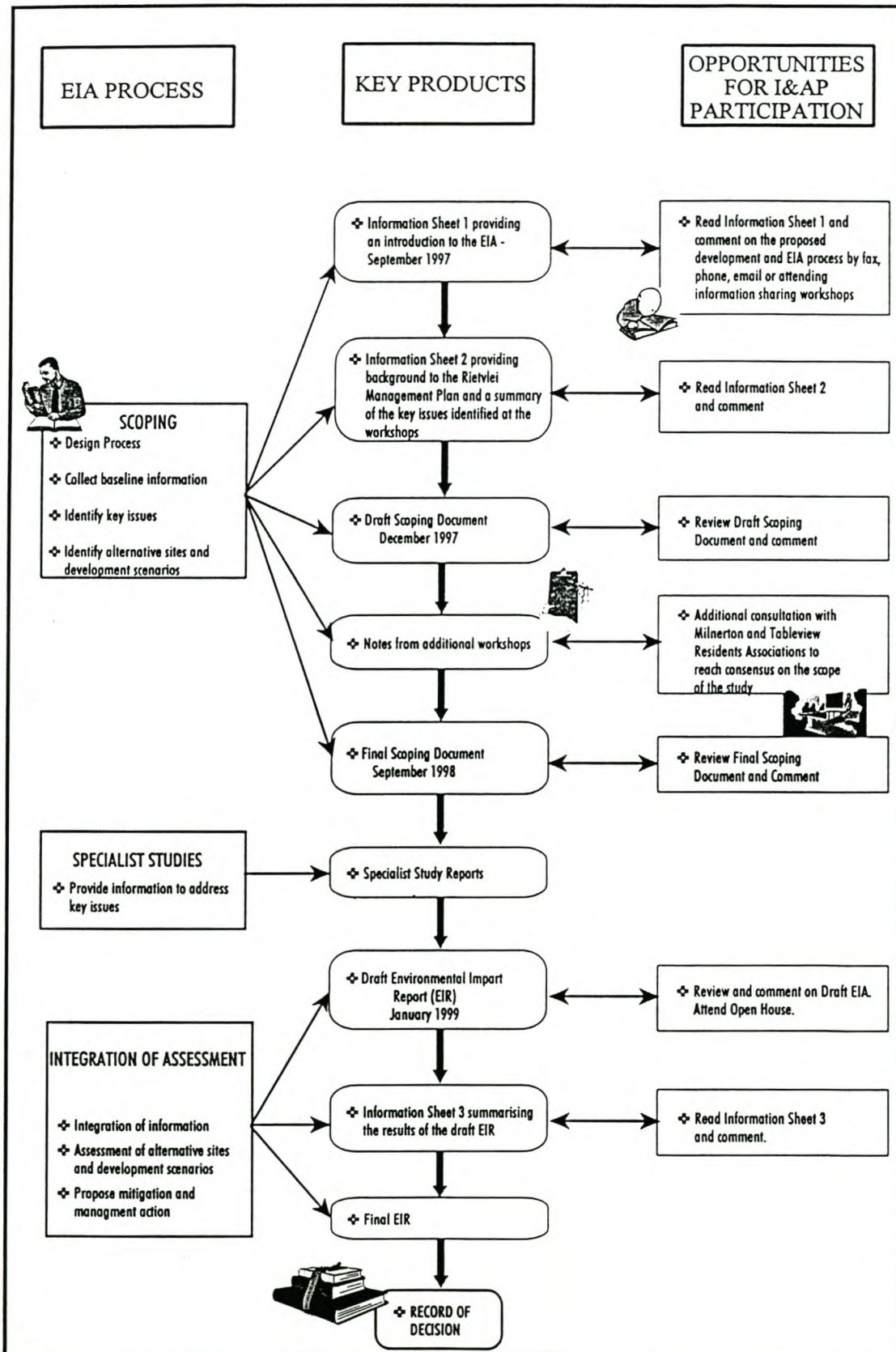


Figure 2:1 : Approach to the Rietvlei EIA



**Appendix VII : Submissions from Interested and Affected Parties in the Rietvlei-EIA,
including comments on the draft EIA Report.**

SUBMISSIONS FROM INTERESTED AND AFFECTED PARTIES
SINCE 5 MARCH 1999 ON THE PROPOSED EDUCATION/ CENTRE AT THE RIETVLEI WETLAND RESERVE
(including comments on the Draft Environmental Impact Report)

Response No.	Date	Raised by	Issue	Comment	Response
1	8 Mar 99	Mrs D Fitzpatrick (tel)	Date of Open Day	The date chosen for the Open Day is unacceptable, given the times of the school and Easter Holidays. An additional meeting date is necessary.	The information presented at the Open Day was the same as that in the Information Sheet sent to all I&APs in the first week of March 1999. The Comments Form available at the Open Day was sent to Mrs Fitzpatrick.
2	10 Mar 99	Mr G Van Zyl (tel)	Table of comparisons	Mr. Van Zyl queried the table of comparisons presented in the March 1999 Information Sheet.	The table was satisfactorily explained to Mr Van Zyl.
3	17 Mar 99	Mr Jooste (tel)	Information Sheet	Responding to the advertisements about the Open Day, Mr Jooste requested a copy of the March Information Sheet.	A copy of the Information Sheet was faxed to Mr Jooste.
4	24 Mar 99	L Wolf (fax)	Endorsement of the project	L Wolf endorsed the project and recommended is Site 6 as the most suitable. SANCOB would have to be moved a little further north and rebuilt into a much more professional centre. SANCOB and the proposed centre should be joined together as an education centre alone will not generate the funds required to maintain the project. Picnic Sites and walking areas should be included. "The homes on Pentz Drive should not despair as I am sure that the building will be well under their line of sight."	These points are noted.
5	29 Mar 99	D Joubert (tel)	Information Sheet	Ms Joubert requested a copy of the March Information Sheet.	A copy of the Information Sheet was faxed to Ms Joubert.

Comments Report on the Draft Environmental Impact Report for the proposed Rietvlei Environmental Centre

Response No.	Date	Raised by	Issue	Comment	Response
6	31 Mar 99	Nelis Visagie (resp)	Draft EIR/ Open Day	<p>In principle, an educational and environmental centre should be established at Rietvlei.</p> <p>The Draft EIR adequately addresses the issues of establishing a facility for guided school tours at Rietvlei, generating funds for the management of Rietvlei and promoting Rietvlei to the public. The Recommendations and Conclusions of the Draft EIR are all applicable.</p>	These points are noted.
7	7 Apr 99	R Robertson (resp)	Draft EIR/ Open Day/ Rejection of the project	<p>In principle, an educational and environmental centre should not be established at Rietvlei.</p> <p>"The damage to the area and to the principle of protecting Rietvlei would not be compensated by the gains. It does not need tourists, and environmental education, with a little extra effort, can be done there without such a centre."</p> <p>A key issue is, "The whole site is below the 1-50 year floodplain. I am in principle against the in-filling of the floodplain. The Centre could be built on stilts, but it is too expensive to park cars on stilts. Who will insure buildings on the floodplain?"</p> <p>This issue has not been fully addressed in the Draft EIR. The Draft EIR "simply presented the EIA results, we need the other pros and cons as well".</p> <p>"Friends of Rietvlei and others fought to prevent Transnet exploitation, encroachment from Bayside Centre and the construction of a road from Marine Drive to Pentz Drive. Why allow this more subtle encroachment, with the invasion of people and vehicles it will entail? Even at 20 000 visitors per year at 55 per day, which means ten or twenty per weekday and hundreds at weekends, and twice or three times that in summer months compared with winter."</p> <p>"We have already spent R300 000 on this EIA. Let's not step up the wastage by another R400 000 or more p.a."</p>	These points are noted.

Response No.	Date	Raised by	Issue	Comment	Response
8	13 Apr 99	Andrew van den Hornet (resp)	Draft EIR/ Open Day	<p>In principle, an educational and environmental centre should be established at Rietvlei.</p> <p>Scenario 2 is favoured because it offers the best access from main roads and offers the best opportunity to be planned in such a way that it can be enlarged at a later date.</p> <p>The Draft EIR adequately addresses these points and "gives a balanced and comprehensive review of the whole issue".</p> <p>"In the design of the centre I would like to see solar power and other environmentally sensitive friendly equipment included."</p>	These points are noted.
9	15 Apr 99	R Briggs (resp)	Draft EIR/ Open Day	<p>In principle, an educational and environmental centre should be established at Rietvlei.</p> <p>"It should be a small scale centre, constructed to allow for expansion at a later date, if necessary."</p> <p>The Draft EIR adequately addresses this point and is "a very concise report".</p> <p>Sites 1 or 6 are suggested.</p>	These points are noted.

Response No.	Date	Raised by	Issue	Comment	Response
10	19 April 99	Friends of Rietvlei (fax)	Draft EIR/ Open Day	<p>"If I consider the main impacts of the proposed development on Rietvlei and surrounds under the following criteria:</p> <ul style="list-style-type: none"> • location • nature and scale • self-supporting amenity • recreation and related activities • ecological values <p>I must conclude that the above mentioned issues were truly visited and then go along with the finding and recommendations of this Draft EIR."</p> <p>"Thank you for a open and transparent approach and I trust that the remainder of the assessment will conclude the process"</p>	These points are noted.
11	26 April 99	A. Birkinshaw (resp)	Rejection of project	<p>In principle, an educational and environmental centre should not be established at Rietvlei.</p> <p>Mr Birkinshaw endorsed the process behind compiling the Environmental Impact Report but supported the no-go option.</p> <p>Alternatively, if a centre were to be established, it should be "outside the boundaries of Rietvlei".</p>	These points are noted.

(tel) = telephone call to Crowther Campbell & Associates

(fax) = telefax to Crowther Campbell & Associates

(resp) = Completed Response form

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24 March 1999.

RIETVLEI ENVIROMENTAL CENTRE EIA
C/O C C A

Dear Sir's/Madam

re EDUCATION CENTRE

Firstly let me state that I am 100% with you on this project. I will not however attend another meeting due to the unruly and darn right rude people who attended the last meeting, for them I humbly appoligise.

There is in my mind only one site to be used for this facility that is site 6. I believe we should go the full hogg with canals,lawns,tea room,etc.

This would mean moving SANCOB a little further north and be rebuilt into a much more professional centre.

SANCOB will be a great crowd puller and that is why I propose that the two projects should join hands. An Education Centre will not be enough to bring in the funds required to maintain this project. Dont forget to allow for picnic sites and walking areas as well. Build something for all to enjoy and for the future of Rietvlei.

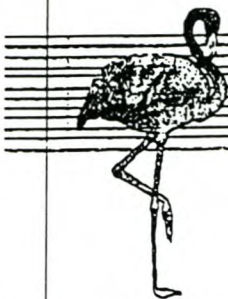
The homes on Pentz Drive should not dispair as I am sure that the building will be well under their line of site.

Good luck to you all.

Yours sincerely,



L. Wolf
for BARRY WOLF



Friends of Rietvlei

P.O.Box 182
Table View
7439

RIETVLEI ENVIRONMENTAL CENTRE EIA

c/o CCA

PO Box 10145

Caledon Square

7905

Tel. 461 1118

Fax 461 1120

Att. Mr Grant Wroe-Street

Dear Sir

PROPOSED ENVIRONMENTAL/EDUCATION TOURISM CENTRE
FOR RIETVLEI RESERVE : ENVIRONMENTAL IMPACT REPORT :

COMMENTS

1. I refer to your EIA and Specialist Studies report as well as your open house on 99/03/31.

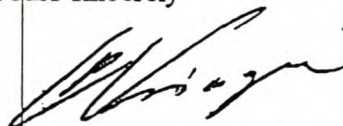
2. If I consider the main impacts of the proposed development on Rietvlei and surrounds under the following criteria :

- location
- nature & scale
- self supporting amenity
- recreation & related activities
- ecological values,

I must conclude that above mentioned issues were truly visited and the go along with the finding and recommendations of this draft EIR.

3. Thank you for a open and transparent approach and I trust that the remainder of the assessment will conclude the process.

Yours sincerely

 99/04/18
Nelis Visagie - Chairman

Appendix VIII : 'God and EPA'.

(Source : United States Congressional Record (1974), in : Wood,1995:77-78)

In the beginning God created heaven and earth.

He was then faced with a class action lawsuit for failing to file an environmental impact statement with HEPA (Heavenly Environment Protection Agency), an angelically staffed agency dedicated to keeping the Universe pollute free.

God was granted a temporary permit for the heavenly portion of the project, but was issued a cease and desist order on the earthly part, pending further investigation by HEPA.

Upon completion of his construction permit application and environmental impact statement, God appeared before the HEPA Council to answer questions.

When asked why he began these projects in the first place, he simply replied that he liked to be creative.

This was not considered adequate reasoning and he would be required to substantiate this further.

HEPA was unable to see any practical use for earth since 'the earth was void and empty and darkness was upon the face of the deep'.

Then God said : 'Let their be light'.

He should never have brought up this point since one member of the Council was active in the Sierrangel Club and immediately protested, asking, 'how was the light to be made ? Would there be strip mining ? What about thermal pollution ?' God explained the light would come from a huge ball of fire.

Nobody on the Council really understood this, but it was provisionally accepted assuming (1) there would be no smog or smoke resulting from the ball of fire, (2) a separate burning permit would be required, and (3) since continuous light would be a waste of energy it should be dark one-half of the time.

So God agreed to divide light and darkness and he would call the light Day and the darkness Night. (The Council expressed no interest with in-house semantics).

When asked how the earth would be covered, God said : 'Let there be firmament made amidst the waters, and let it divide the waters from the waters'.

One ecologically radical Council member accused him of double talk, but the Council tabled action since God would be required first to file for a permit from ABLM (Angelic Bureau of Land Management) and further would be required to obtain water permits from appropriate agencies involved.

The Council asked if there would be only water and firmament and God said : 'Let the earth bring forth the green herb, and such as may seed, and the fruit tree yielding fruit after its kind, which may have seen itself upon the earth'.

The Council agreed, as long as native seed would be used.

About future development, God also said : 'Let the waters bring forth the creeping creature having life, and the fowl that may fly over the earth'.

Here again, the Council took no formal action since this would require approval of the Game and Fish Commission coordinated with the Heavenly Wildlife Federation and Audobongelic Society.

It appeared everything was in order until God stated that he wanted to complete the project in six days.

At this time he was advised by the Council that this timing was completely out of the question...HEPA would require a minimum of 180 days to review the application and environmental impact statement, then there would be public hearings.

It would take 10 to 12 months before a permit could be granted.

God said : 'To Hell with it'.